

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.894 of 2019**

Arising Out of PS. Case No.-15 Year-2015 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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1. CHANDAN RAI S/o Sri Ramanand Rai R/o village- Bishunpur, P.S.-
Goraul, District- Vaishali
 2. Arjun Paswan S/o Sri Ramnath Paswan R/o village- Bishunpur, P.S.- Goraul,
District- Vaishali

... .. Appellant/s

Versus

UNION OF INDIA THROUGH INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, REGIONAL UNIT
Patna, Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Senior Advocate
		Mrs. Vaishnavi Singh, Advocate
		Md. Imteyaz Ahmad, Advocate
		Mr. Shashank Shekhar, Advocate
		Mr. Nilesh Kumar, Advocate
For the Respondent/s(DRI):		Mr. Ranvir Kumar, Advocate

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

and

HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE MR. JUSTICE RAJIV ROY)

Date : 28-06-2023

The two appellants have preferred the present
appeal against the judgment and order dated 13th June,
2019 passed by the learned Additional Sessions Judge-2nd,
Patna in NDPS Special Case No. 15 of 2015 by which they



have been convicted under sections 20(b)(ii)(c) of the N.D.P.S. Act and further an order dated 19.06.2019 by which they have been sentenced to undergo Rigorous Imprisonment for twelve years and fine of Rs. 1 lakh each and in default of payment of fine, to undergo simple imprisonment for one year.

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

3. The Directorate of Revenue Intelligence, Regional Unit, Patna (henceforth for short 'the DRI') received a secret and specific information about movement of vehicle loaded with '*ganja*'(NDPS), constituted a team and thereafter, intercepted a Tata 407 bearing Registration No. BR-31-5751 on 18.07.2015 at 1.30 hours at Mahatma Gandhi Setu Bridge, Patna in the presence of two independent witnesses. The vehicle was being driven by the appellant no. 1, Chandan Rai while another person Arjun Paswan @ Arjun Kumar Rai (appellant no. 2) was also present in the said vehicle. After preliminary examination, in the presence of said witnesses and upon confirmation of presence of huge consignment of NDPS '*ganja*' in the said



vehicle; for the safety and security reasons, it was brought to 'the DRI' office, Bailey Road, Patna.

4. On thorough examination of the said vehicle in the presence of the two independent witnesses, altogether 12 bundles of '*ganja*' each containing in two small packets wrapped in black and blue polythene sheets were found. Each bundle was opened and its content examined. The total weight was found to be 242.20 kg (net). Two representative samples were prepared in accordance with the prescribed sampling norms, sealed in the presence of the independent witnesses as also the apprehended persons (the appellants herein).

5. Accordingly, the '*ganja*' (NDPS) weighing 242.20 kg (net) valued at Rs. 9,68,800/- as also the vehicle bearing Registration No. BR-31-5751 valued at Rs. 1 lakh (total value Rs. 10,68,800/-) were found liable for confiscation under sections 60(1) and 60(3) of the N.D.P.S. Act. Both the accused persons admitted their guilt and knowledge of the possession, carriage and transportation of the seized '*ganja*' (N.D.P.S.) in greed of money. Accordingly, they were arrested, close relatives informed



and thereafter, they were produced before the concerned Court to be remanded to judicial custody. This led to the lodging of the Special Case No. 15 of 2015.

6. The prosecution side produced altogether six witnesses in support of its case who are/were as follows:-

P.W.-1 Ramanand Choudhary (Intelligence Officer and complainant)

P.W.-2, Pradeep Kumar Pandey (Intelligence Officer and member of the raiding team)

P.W. 3, Rakesh Ranjan (Senior Intelligence Officer and the head of the raiding team)

P.W. 4, Rajeev Ranjan Pathak (Intelligence Officer and member of the raiding of the raiding party)

P.W. 5, Mahesh Kumar Sinha, Inspector (Godown Incharge, Stock Department, Patna)

P.W. 6, Sudhir Kumar, Independent witness



7. The prosecution side further marked and produced following exhibits:-

Ext. 1- Written Panchnama dated 18.07.2015

Ext.2- Seizure memo dated 18.07.2015

Ext.2/1 -Detail description of recovered Ganja

Ext.3- Statement of accused Chandan Rai

Ext.4 - Statement of accused Arjun Paswan

Ext.5 - Arrest memo of Chandan Rai

Ext.6 - Arrest memo of Arjun Paswan

Ext.7- Notice for search u/s 50 NDPS Act
of Arjun Paswan

Ext. 8- Notice for search u/s 50 NDPS Act
of Arjun Paswan

Ext. 9 - Forwarding report

Ext. 10- Forwarding report to CRCL, Kolkata

Ext. 11- Report of laboratory custom, Howrah,
Kolkata

Ext 12 -Inventory of seized articles

Ext.13- Inventory of seized vehicle Tata 407

Reg No. BR31-5751

Ext.14- Certification report of Md. Inam



Khan, 1" Class Judicial Magistrate

Ext.15- Inventory of Narchotic Drugs on the
basis of report of Md Inam Khan, 1"
Class Judicial Magistrate

Ext. 16- Seizure inventory of Tata 407
Regn.No.BR31- 5751 on the basis of
order of Md. Inam Khan.

Ext. 17- Verification report of address of
accused Arjun Paswan and Chandan
Rai

Ext. 18- Verification report of owner of
vehicle BR31- 5751

Ext. 19- Statement of owner of vehicle BR31-
5751 namely Amod Kumar Singh

Ext. 20- Voter Identity Card of Amod Kumar
Singh issued by Election Commission
of India

Ext. 21- Statement of Ravi Kumar Mahto

Ext. 22- Voter Identity card of Ravi Kumar
Mahto issued by Election
Commission of India



Ext.23- Complaint petition

Ext.24- Sample of Ganja with signature of I.O.

Ext 24/1- Signature of accused Chandan Rai
on sample of recovered ganja envelop

Ext.24/2- Signature of accused Arjun Paswan
on sample of recovered ganja envelop

Ext.24/3- Signature of Panch Sudhir Kumar
and Dinesh Prasad

Ext.25- Signature of the then Incharge of Mal
Godown Rakesh Ranjan on Certification
envelop

Ext.25/1- Signature of the then Investigating
Officer on Certification envelop

8. The defence side produced only one document, i.e Exhibit A, the complaint of Ramanand Choudhary to the Registrar, Civil Court, Patna.

9. The P.W. 1, Ramanand Choudhary, Intelligence Officer, DRI is the complainant of the case and according to him, the confidential information was received by Rakesh Ranjan, the Senior Intelligence Officer, who in turn informed the complainant about it on 17.07.2015 at 9



P.M. Accordingly, a team was constituted which proceeded from DRI office, Patna. Enroute at Agamkuan, they picked up two independent witnesses who acceded to their request for being witnesses to alleged seizure and reached Mahatama Gandhi Setu where they found a Tata 407 vehicle bearing Registration No. BR-31-5751 which was intercepted whereafter the two occupants (appellants herein) upon query confirmed about the presence of '*ganja*' (N.D.P.S.) in the vehicle and accordingly they were served notice under section 50 of the N.D.P.S. Act.

10. On search, 12 bags were found from the backside of the vehicle. Two bags were opened and it was found to be the banned article (*ganja*). Thereafter, the vehicle and the accused persons alongwith independent witnesses were brought to 'the DRI' office, Patna and upon weight, the same was found to be 242.20 kg. Samples were drawn, two representative packets of 24 grams each were made, sealed, signatures of the independent witnesses taken and thereafter the same was sent to the CRCL, Kolkata on 18.07.2015 itself.

11. He further accepted that he is the



complainant as well as the Investigating Officer of the present case. The said P.W. further acknowledged that the seized articles were kept in the customs godown and the statement of the accuseds were taken at 'the DRI' office itself whereafter they were produced before the Magistrate.

12. P.W.-2 Pradeep Kumar Pandey is another Intelligence Officer, who was the part of the raiding team and he narrated the same story. He also claims to have received information from Senior Intelligence Officer on 17.07.2015 at 9 PM. He further deposed that the seizure list and '*punchnama*' does not have his signature. Further, the seizure list was not prepared at the place of occurrence and the '*ganja*' (NDPS) was sealed at 'the DRI' office.

13. P.W. 3 Rakesh Ranjan is the Senior Intelligence Officer, DRI, Patna. According to him, he got secret information on 17.07.2015 at 11:40 P.M. and thereafter, a team was constituted and accordingly, they moved to Gandhi Setu alongwith two independent witnesses, who were picked up at Kumhrar. Around 2:00 PM, they found the said vehicle bearing Registration No. BR-31-5751 coming. It was intercepted and upon



confirmation of the presence of '*ganja*' in the vehicle, the notice under section 50 of the N.D.P.S. Act given and thereafter, the vehicle was searched and 12 bundles were found.

14. Out of the said bundles, two bundles were opened and it was found that the same contained '*ganja*' (N.D.P.S.). Accordingly, the vehicle was taken to 'the DRI' office and upon weighing there, it came to 242.20 kg. Accordingly, two samples of 24 gm each prepared, seizure list made and the statement of the accuseds taken by the complainant. Further, in his cross examination, he stated that the personal search of accuseds were made at 'the DRI' office.

15. Next in line was P.W. 4, Rajeev Ranjan Pathak. According to him, he was part of the team constituted at 10:30 PM on 17.07.2015 and upon interception, 12 bags of *ganja* (NDPS) were recovered and after confirmation from two bags, the vehicle was shifted to 'the DRI' office where it was found to be 242.20 kg as weight. Sample taken, the vehicle and the *ganja* seized and the appellants were sent to the custody.



16. P.W. 5 is Manish Kumar Sinha, the Godown In- Charge of the Customs Department. According to him, he took charge of the godown on 23.05.2016. He further deposed that the sample of the *ganja* (NDPS) that was produced in the Court bore signatures of the Investigating Officer, the independent witnesses as also the accused persons. Further, the envelop contains certification of the earlier godown In-charge, Rakesh Ranjan and the I.O. Ramanand Choudhary.

17. P.W. 6 Sudhir Kumar, the independent witness, has accepted his signature on the seizure list (Exhibits 2 and 2/1) as also the confessional statement of the accused persons (Chandan Rai and Arjun Paswan) (Exhibits 3 and 4) respectively. He however, failed to recognize the accused persons and further in his cross-examination stated that he is an illiterate and his signature was taken on blank paper and thus what was inscribed therein was not seen by him.

18. It is important to note that out of the two independent witnesses, only Sudhir Kumar was put forward by the prosecution and the other witness namely, Dinesh



Prasad was not amongst them.

19. The accused persons (appellants herein) were examined under section 313 of the Cr.P.C. on 05.10.2018 and they denied the allegation made against them. The prosecution supported its case narrating that the different sections of N.D.P.S were strictly followed in the interception/seizure/sampling of the banned article as also the rights that the accused persons have under N.D.P.S. Act.

20. On the other side, the defence counsel submitted that there was complete violation of sections 42, 50 and 52 of the N.D.P.S. Act and further both the complainant as well as the Investigating Officer was the same person and as such, the entire investigation got vitiated. Accordingly, he claimed that the accused persons being innocent are entitled to the benefit of doubt and they be acquitted.

21. After hearing the respective parties, the Trial Court came to the conclusion that the prosecution has been able to prove charges against the appellants under section 20(b)(2)(C) of the N.D.P.S. Act 1985. Accordingly, it convicted them vide an order dated 13.06.2019 and



further vide an order dated 19.06.2019 sentenced them to undergo rigorous imprisonment for twelve years and fine of Rs. 1 lakh each and in default of payment of fine, to undergo simple imprisonment of one year for the offence under section 20(b)(ii)(c) of the N.D.P.S. Act.

22. Aggrieved, the present appeal has been preferred by the two appellants.

23. Heard Mr. Ajay Kumar Thakur, learned Senior Counsel for the appellants and Mr. Ranveer Kumar who represent 'the DRI'.

24. It has been contended by the learned Senior Counsel that the present appellants have been framed by 'the DRI' official which can be reflected from the facts that the different prosecution witnesses have given different timings so far as the information received regarding movement of vehicle carrying '*ganja*' (NDPS) is concerned.

25. According to him, P.W. 1, Ramanand Choudhary who is the complainant in the case has stated that upon secret information received by his Senior Intelligence Officer, Rakesh Ranjan, he was apprised of the said information on 17.07.2015 at 9:00 PM.



26. The same statement was made by the P.W. 2, Pradeep Kumar Pandey, Intelligence Officer who deposed that secret information was received by the Senior Intelligence Officer, Rakesh Ranjan and conveyed to him at 9:00 PM on 17.07.2015. However, the P.W. 3, Rakesh Ranjan, the Senior Intelligence Officer himself on the other hand has deposed that he received the secret information about the movement of the vehicle carrying '*ganja*' (NDPS) on 07.07.2015 at 11:00 PM. He thus submits that there is complete inconsistency so far as the secret message that the prosecution witnesses/DRI officials received in the matter.

27. It has been further submitted that according to the P.W. 1, upon information, a team was constituted and thereafter, they moved towards Mahatama Gandhi Setu and near Kumhrar, they requested two persons namely, Sudhir Kumar and Dinesh Prasad to accompany them as independent witnesses narrating them the case. This according to the learned Senior Counsel is not in the scheme of the things that has been incorporated in the NDPS Act inasmuch as once the interception is made, locals present at the place of occurrence are to be made the



independent witnesses.

28. He further submits that in the dead of night, two witnesses are picked up even prior to the alleged interception/seizure of any contraband who too are not the natives of that area rather resident of Maner and Shahpur in the District of Patna far away from the said place.

29. The further submission is that despite secret information, they had not moved to the place of occurrence with the weighing machine as also the materials to seize the articles and after interception of the vehicle bearing Registration No. BR-31-5751 on 18.07.2015 at 1:30 hours at Mahatama Gandhi Setu, Patna, the same was driven down to 'the DRI' office at Bailey Road, Patna.

30. He submits that no reason has been assigned as to why the seizure procedure was not completed at the place of occurrence and thus there is serious question on the genuineness of article that was brought to 'the DRI' office.

31. Further, the allegation is that 12 bundles of 'ganja' (NDPS) weighing 242.20 kg was/were recovered, each of the bundle opened, examined and two



representative samples were taken. This according to the learned Senior Counsel was in complete violation of section 52A (2)(c) of the NDPS Act which clearly envisages that the representative samples are to be drawn in the presence of the Magistrate, who will certify its correctness.

32. It has been further submitted that the complainant himself became the Investigating Officer taking over the charge which again was in violation of the NDPS Act as he being the complainant could not have taken up the role of Investigating Officer.

33. It has further been submitted that the seized bag weighing 242.20 kg '*ganja*' (NDPS) was never produced before the Court nor any petition was preferred for getting it destroyed nor any certificate to this effect was ever produced and thus, it can be safely construed that the two accused persons have been falsely implicated in this case.

34. The learned Senior Counsel lastly submitted that the complainant claims to have reported the entire facts to his Superior Officer in compliance with section 57 of the NDPS Act, 1985. However, from the



record, it can be seen that the said information was given to Mr. Rakesh Ranjan, the Senior Intelligence Officer, who himself had received the secret information and was leading the team that intercepted the vehicle, brought the same to 'the DRI' office and in whose presence the bags were opened, examined, samples taken and sent to the CRCL, Kolkata. Thus, a person who was part of the said operation cannot be the superior authority who was to be informed as envisaged in section 57 of the NDPS Act.

35. *Per contra*, Mr. Ranvir Kumar, learned counsel for 'the DRI' submitted that from the deposition put forward by the prosecution witnesses as well as the materials on record, it is clear that all the processes envisaged under the NDPS Act was followed. It is his submission that the Senior Intelligence Officer received the secret information which followed constitution of team and thereafter, after having picked the two independent witnesses on way to the Mahatama Gandhi Setu, Patna, the vehicle was intercepted and after the confirmation that the same is carrying '*ganja*' (NDPS), it was brought down to 'the DRI' office, Patna for security reason where the entire



procedure was followed.

36. It is his further submission that all the sections of NDPS Act viz sections 50, 52A and 57 was/were duly followed inasmuch as notices were given to the accused persons of their right of being searched either before the Magistrate or Gazetted Officer and only after their consent, the same was searched in the presence of the Senior Intelligence Officer.

37. It has further submitted that section 52A(2) (c) of 'the NDPS Act' was also followed as the two samples that were taken in the presence of 'the DRI' officials sealed and thereafter, it was sent to the CRCL office, Kolkata keeping the learned Magistrate informed. It is his further contention that 'the DRI' officials always follows the same procedure with regard to the sampling every time the contraband is seized.

38. So far as the compliance of section 57 of 'the NDPS Act' is concerned, it is his submission that from the record, it is clear that the immediate superior authority to the complainant was informed about the said seizure and in this case, the Senior Intelligence Officer (Rakesh Ranjan)



was informed and only because he was part of the raiding team, it cannot be said that the said procedure was not complied with.

39. So far as the non-production of seized bag before the Court is concerned, it is his submission that it might have been destroyed and as such, the same cannot be the reason for setting aside the case in hand.

40. We have heard the learned counsels for the appellants as well as 'the DRI' and have perused the records. The moot question before this Court is whether the prosecution has been able to prove its case beyond all reasonable doubts. Further, whether the procedures that has to be adopted by the prosecution side was in line with the NDPS Act or not.

41. The case of the prosecution is that a secret information was received by the Senior Intelligence Officer. Accordingly, the complainant as well as the other Intelligence Officers were informed, a team constituted, it went to Mahatama Gandhi Setu, Patna and enroute, two independent witnesses were picked up from Kumhrar. This according to the prosecution happened between 9:00 P.M.



(17.07.2015) to 1:30 A.M. (18.07.2015) when the vehicle was intercepted.

42. However, in this story, there is complete inconsistency so far as the timing of the receipt of the information is concerned inasmuch as while P.W.1, Ramanand Choudhary and P.W. 2, Pradeep Kumar Pandey on the one hand claimed that secret information was passed on to them by P.W. 3, Rakesh Ranjan at 9:00 P.M. on 17.07.2015, the P.W. 3 himself deposed that he actually got the said information at 11:40 P.M. on 17.07.2015.

43. Further, it is not the case of the prosecution that once they intercepted the vehicle and after having *prima facie* satisfied that it carried contraband articles requested the local people to become witness rather they actually picked up two independent witnesses on way to Mahatama Gandhi Setu, Patna, itself even before the alleged seizure.

44. Further, having intercepted the vehicle at 1:30 AM on 18.07.2015 and *prima facie* satisfied that it carried '*ganja*', the vehicle was driven to 'the DRI' office Patna for completion of other required formalities. Although



the prosecution do say that due to safety and security reasons, the vehicle was taken to the DRI office but in the considered view of the Court, the formalities had to be completed at the place of occurrence itself as they had prior information about the movement of the vehicle carrying contraband and as such they had sufficient time to move alongwith all the materials needed for the seizure of the contraband.

45. Further, from the perusal of record, it seems that the vehicle was intercepted at 1:30 hours on 18.07.2015 and 'the DRI' office according to the prosecution story is 20-25 kms from Mahatama Gandhi Setu, Patna. However, the confiscation process was done at 11:00 hours on 18.07.2015. No reason for such inordinate delay is on record.

46. P.W. 1 in his deposition has stated that the accused persons were given notices under section 50 of the NDPS Act. In paragraph-22 of his deposition, he has accepted that the notices does not contain the signature of the accused persons. This in the considered view of the Court is complete violation of section 50 of the NDPS Act



and gives credence to the submission of learned Senior Counsel that no such notice was given to the accused persons.

47. This Court also noticed that it is the prosecution's case that in 'the DRI' office, in the presence of its Senior Officials, two representative samples of the 'ganja' (NDPS) were taken, sealed and later on 18.07.2015 itself, the same were sent to the CRCL office, Kolkata. This again in the view of the Court is in complete violation of section 52A(2)(c) of 'the Act'.

48. It would be appropriate to incorporate section 52 & 52A of 'the NDPS Act'.

52. Disposal of persons arrested and articles seized.-(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest. (2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. (3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to-



(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

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 [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 [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.]

49. A plain reading of para 52A(2) (c) of 'the NDPS Act' envisages drawing of representative samples in the presence of Magistrate after making application to it who will certify to it.

50. In this connection, it is important to take note of the case of **Union of India Vs. Mohanlal & Another** reported in **(2016) 3 SCC 379** which amongst other dealt with the handling and disposal of the seized Narcotics Drugs and Psychotropic Substances. The Hon'ble Supreme Court clearly held that drawing of the samples had to be done in the presence of the Magistrate as the question of drawing of samples in the absence of Magistrate does not fit in this scheme of things. The Magistrate in the



considered view of this Court means the Judicial Magistrate.

51. This Court would like to incorporate paragraph nos. 14 to 17 of the said **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.

52. Recently the Hon'ble Apex Court also took note of **Mohanlal's case (supra)** in **Bothilal Vs. the Intelligence Officer, Narcotics Control Bureau** disposed



of on 26.04.2023 in (**Cr. Appeal No. 451 of 2011**) wherein it was held that the act of drawing of samples from all the packets at the time of seizure is not in conformity with what was held by the **Mohan Lal (supra)** and therefore, there is serious doubt about the prosecution that the substance recovered was contraband. Accordingly, the said appeal was allowed and the appellant of that case was acquitted for the offence alleged against them.

53. There is another serious loophole in the case inasmuch as the seized bag was never produced before the Court and it was not the case of the prosecution that with the permission of the Court, the same was destroyed and a certificate to this effect was produced before it. This according to us seriously creates doubt in the recovery of ‘ganja’ (NDPS) from the appellants as alleged by the prosecution.

54. So far as the case of the appellants that the complainant himself being the Investigating Officer, the case was prejudiced, this Court has taken note of the Hon’ble Apex Court’s Judgment in **Rajesh Dhiman Vs. State of Himachal Pradesh & Anr.** reported in (2020) 10



SCC 740 wherein it has been held as follows:-

“11. Suffice to say that the law on this point is no longer res integra and the controversy, if any, has been set at rest by the Constitutional Bench of this Court in Mukesh Singh. The earlier position of law which allowed the solitary ground of the complainant also being the investigating officer, to become a spring board for an accused to be catapulted to acquittal, has been reversed. Instead, it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias, with no sweeping presumption being permissible. It would be worthwhile to extract the following conclusions drawn in the aforecited judgment:

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

1. That the observations of this Court in Bhagwan Singh v. State of Rajasthan: Megha Singh v. State of Haryana and State v. Rajongam and the acquittal of the accused by this Court on the ground that as the informant and the investigator were 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 Mohan Lal v. State of Punjab 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."

55. Thus, this Court holds that there is no such bias on the complainant also becoming the Investigating Officer and that cannot be a ground for setting aside the order.

56. Now, coming to the independent witnesses. The prosecution side presented only one witness before the court (P.W. 6) who in turn deposed that he had signed on blank papers and was not able read the contents. He further failed to recognize the accused persons.

57. Considering all the aforesaid facts, this Court can safely hold that the prosecution side has not done its duty strictly in accordance with 'the NDPS Act'. On the contrary at each and every step, it has virtually violated the 'said Act' and it is high time that they put their house in order.

58. Thus, in our view, the prosecution story is not free from suspicion and they have failed to prove beyond reasonable doubt that the appellants were in possession of the contraband and/or were carrying the same in the vehicle.



59. Accordingly, the impugned judgment and order of conviction dated 13.06.2019 and sentence dated 19.06.2019 passed in Special Case No. 15 of 2015 is hereby set aside. The appellants are acquitted of the charges under sections 20(b)(ii)(c) of ‘the N.D.P.S. Act’ by giving them benefit of doubt.

60. The appellants are in custody. Let them be released forthwith if they are not required in any other case.

61. This appeal is accordingly allowed.

(Rajiv Roy, J)

(Chakradhari Sharan Singh, J)

(Chakradhari Sharan Singh, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	01.05.2023
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