

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1431 of 2018

Arising Out of PS. Case No.-227 Year-2015 Thana- BARACHATTI District- Gaya

Krishna Ram @ Kishana Ram S/o Late Mana Ram, resident of village- Palli,
P.S.- Lohawat, District- Jodhpur, Station- Rajasthan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1440 of 2018

Arising Out of PS. Case No.-227 Year-2015 Thana- BARACHATTI District- Gaya

Gopi Lal Son of Khoja Ram, Resident of Village- Palli, P.S.- Lokhawat and
District- Jodhpur Rajasthan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1431 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Manish Kumar No.2, Advocate
Mr. Gajendra Kumar Singh, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 1440 of 2018)

For the Appellant/s : Mr. Bhola Kumar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 23-06-2023

These appeals have been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge the impugned judgment of conviction dated 01.10.2018 and order of sentence dated 12.10.2018, passed by

learned Additional Sessions Judge-I-cum-Special Judge (NDPS, Act), Gaya, in NDPS Case No. 09 of 2017, arising out of Barachatti P.S. case no. 227 of 2015, whereby the appellants have been convicted and sentenced as under:

Criminal Appeal (DB) No. 1431 of 2018				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Krishna Ram	18(b) of the NDPS Act	R.I. for 12 years	1,00,000/-	S.I. for six months
Criminal Appeal (DB) No. 1440 of 2018				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Gopi Lal	18(b) of the NDPS Act	R.I. for 12 years	1,00,000/-	S.I. for six months

2. Based on a self-statement of the Inspector of police-cum-officer-incharge, Barachatti Police Station, Ravi Prakash Singh (PW-7) dated 11.06.2015, the concerned FIR bearing Barachatti P.S. Case No. 227 of 2015 came to be registered on the same day, i.e., 11.06.2015. He disclosed in his self-statement that, at 3:30 am on 11.06.2015, he had received a confidential information to the effect that three persons were carrying Opium in a red Hero Honda Splendor motorcycle from the eastern side on GT Raod and destined to reach Gaya Railway Station. After having entered a *sanha* regarding receipt of the secret information, he informed the superior officials and passed on the information to a police patrolling party headed by a Sub-inspector of police,

Pradeep Kishore Sinha (PW-2) accompanying constable Dinbandhu Kumar (PW-4), constable Rajesh Kumar (PW-8), constable Narendra Kumar (not examined) and constable Rajendra Prasad (PW-6). The informant (PW-7) also proceeded towards the indicated place with constable Vimlesh Kumar (PW-5). The informant, after having issued necessary instructions to the patrolling party also reached and started checking the vehicles. In the meanwhile, they saw one red Hero Honda motorcycle arriving from the eastern side. The patrolling party signalled to stop the motorcycle, the motorcyclists started fleeing away. They were, however, apprehended who disclosed their names as Krishna Ram (an appellant) Gopi Lal and Lekha Singh Bhogta. The informant further disclosed in his self-statement that in the presence of two independent witnesses, the said three persons were separately searched leading to recovery of 2.600kg and 800gm (total 3.400kg) liquid Opium from the bag in the possession of the appellant Krishna Ram; 2.05 kg and 1.350 kg contained in two separate containers (total 3.400kg) liquid Opium along with driving license and a mobile phone from the appellant Gopi Lal. A mobile phone was recovered from Lekha Singh Bhogta (a co-accused). A seizure list was prepared in the presence of witnesses Pawan Kumar (PW-1) and another witness of the same name. It is

clarified that Pawan Kumar, S/o Baijnath Prasad Gupta was examined at the trial as PW-1, whereas another seizure list witness of the same name, i.e., Pawan Kumar S/o Pramanand Prasad Gupta, came to be examined as a defense witness as DW-1 at the trial. We have deemed it apt to notice this fact in the beginning so as to obviate any scope of confusion over the names of PW-1 and DW-1. From the self statement of the informant it appears that it is the prosecution's case that co-accused Lekha Singh Bhogta disclosed about cultivation of Opium in the forest area under the control of Naxalites and for generating revenue, the Opium was handed over to the appellants Krishna Ram and Gopi Lal for selling the same to the drug dealers. With the said allegation, the aforesaid Barachatti P.S. Case No. 227 of 2015 came to be registered for the offences punishable under Sections 18, 20 and 22 of the NDPS Act. The investigation was handed over to Sub-inspector of police, Raj Kumar Mandal (PW-3).

3. The police, upon completion of investigation, submitted its chargesheet on 09.09.2015 against these appellants and co-accused Lekha Singh Bhogta for commission of the offences punishable under Sections 18, 20 and 22 of the NDPS Act. From the chargesheet, it transpires that the prosecution intended to prove the offence against the chargesheeted persons

based on evidence of the witnesses who were members of the raiding party, the informant and the investigating officer as well as the seizure list witness Pawan Kumar S/o Baijnath Prasad (PW-1).

4. The court, after having taken cognizance of the aforesaid offences, framed charges against these appellants for commission of the offences punishable under Sections 18, 20, 22 of the NDPS Act. Subsequently, charges were corrected and altered and the appellants were charged of commission of offence punishable under Section 18 (b) of the NDPS Act by an order dated 11.09.2018. The appellants denied the charge and claimed to be tried. They were put on trial accordingly. At the trial, the prosecution examined nine witnesses as under:

PW-I	Pawan Kumar
PW-II	Pradeep Kishore Sinha
PW-III	Raj Kumar Mandal
PW-IV	Dinbandhu Kumar
PW-V	Vimlesh Kumar
PW-VI	Rajendra Prasad
PW-VII	Ravi Prakash Singh
PW-VIII	Rajesh Kumar
PW-IX	Surendra Singh

5. The prosecution proved following documents at the trial in addition to oral evidence of the witnesses as mentioned below:-

Exhibit-1	Signature of Pawan Kumar (seizurelist witness) seizurelist.
Exhibit-1/1	Signarure of informant Ravi Prakash on seizurelist.
Exhibit-2	Self statement of informant dated 11.06.2015 (informant)
Exhibit-3	Seizurelist dated 11.06.2015 relating to instand case about recovery of liquid Opium 3.400 Kg, etc. from possession of each of the accused
Exhibit-4	Application for sending sample to the C.F.S.L., Kolkata.
Exhibit-5 to 5/1	Carbon copy of test memo and forwarding letter dated 08.09.2015 relating to sending of its sample to the joint director C.F.S.L. Kolkatta and F.S.L., Patna respectively.
Exhibit-6	Carbon Copy of forwarding letter relating to sending of sample of the seized substance to the director F.S.L., Patna.
Exhibit-7	F.S.L. report bearing no.- C.F.S.L. (K)/EE/2015 (Bihar) 2118, dated 31.03.2017 received from office of director of C.F.S.L. Kolkatta relating to the sample of the seized substance in which opium has been detected as well as opium alkaloids have also been detected in the conteints of sample (Ext.).

6. Further the prosecution produced following material exhibits at the trial:-

Material Ext.-I	Sealed plastic container having 800 gram Opium (with objection).
Material Ext.-II	Sealed Plastic container having 1.350 Kg. Opium (with objection).
Material Ext.-III	Sealed Plastic container having 2.600 Kg. Opium (with objection).
Material Ext.-IV	Sealed Plastic container having 2.050 Kg. Opium (with objection).

7. After closure of the prosecution's evidence, the appellants were questioned under Section 313 of the CrPC by the trial Court. The appellants answered to the questions in negative. It is worthwhile mentioning that till the time the appellants were questioned under Section 313 of the CrPC on 16.03.2018, the FSL report was not marked exhibit by way of evidence. After the FSL report was brought on record by way of evidence on 01.08.2018, the appellants were again examined under Section 313 of the CrPC

on 14.08.2018, so as to give them opportunity to explain the circumstances appearing against them. Thus, in the present case, the appellants were examined twice under Section 313 of the CrPC in the aforesaid background.

8. The appellants examined four witnesses in support of their defence including one of the seizure list witnesses Pawan Kumar (DW-1), S/o Pramanand Prasad Gupta, Girdhari Ram (DW-2), an owner of the Hotel situated at Barachatti on GT Road, Dr. Ashok Kumar (DW-4). The appellant Gopilal also got examined himself as DW-3.

9. The trial Court, after having appreciated the evidence adduced at the trial, has concluded that the confidential information received by the informant was transmitted to an official superior and there was thus due compliance of Section 42 (2) of the NDPS Act. The trial court, after having noticed the depositions of the prosecution's witnesses, particularly, PW-2, PW-6, PW-7 and PW-8 as regards recovery of liquid Opium in four containers, reached a conclusion that the prosecution has been able to establish the charge levelled against these appellants of recovery of commercial quantity of contraband Opium, punishable under Section 18(b) of the Act beyond all reasonable doubts, and accordingly, held the appellant guilty of the aforesaid offences by

the impugned judgment dated 01.10.2018. By a subsequent order dated 12.10.2018, the trial court sentenced the appellants to undergo imprisonment and fine consequent upon their conviction, as has been noted above in the present judgment.

10. We have heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant Krishana Ram in Criminal Appeal (DB) No. 1431 of 2018 and Mr. Manish Kumar No. II, learned counsel for the appellant Gopi Lal in Criminal Appeal (DB) No. 1440 of 2018. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor has represented the State in both the appeals.

11. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant has submitted that there has been no compliance of the mandatory requirement under Section 42 (2) of the NDPS Act inasmuch as there is no evidence adduced at the trial that the secret information, which was received by the informant, was reduced in writing. He has further submitted that there is no evidence to prove that the information taken down by the informant in writing under Sub-Section (1) of Section 42 of the Act was ever transmitted to any immediate superior official. He has further argued that in the present case, none of the seizure list witnesses have supported the prosecution's case inasmuch as PW-1

has been declared hostile at the instance of the prosecution. He has also submitted that there is no evidence that the liquid Opium, alleged to have been duly seized, was ever sealed either at the place of occurrence or anywhere else. He contends that the prosecution's witnesses miserably failed to establish at the trial that the seized articles were duly sealed with due care for safety in order to rule out any chance of adulteration. He has argued that the prosecution has not been able to prove beyond all the reasonable doubts the recovery of the articles from the possession of the appellant and, therefore, the conviction recorded by the trial court is unsustainable. He has also argued that whereas the seizure of the contraband articles, according to the prosecution's case, was made on 11.06.2015, a much belated application was made for transmitting the sample for testing to the FSL on 08.09.2015. He submits that from the FSL reports, it will transpire that the samples were, in fact, received on 17.12.2015. The FSL report was prepared between 27.01.2017 to 31.03.2017. There is no evidence on record disclosing the place where the sample was kept from the date of drawl of smaple till the same was sent to the Forensic Science Laboratory in December 2015. He contends that this aspect itself is adequate to doubt the prosecution's case. In support of his submissions, he has placed reliance on the Supreme Court's

decision in the case of *Karnail Singh v. State of Haryana* reported in (2009) 8 SCC 539, *Union of India v. Mohanlal* reported in (2016) 3 SCC 379, *State of Uttar Pradesh v. Hansraj* reported in (2018) 18 SCC 355 and a recent decision dated 10.11.2022 in case of *Amirul Rahaman v. Union of India* rendered in **Criminal Appeal No. 1945 of 2022**. He has also placed reliance on decision of this Court rendered on 12.05.2023 in **Criminal Appeal (DB) No. 25 of 2020** (*Amar Choudhary v. The State of Bihar*), to bolster his contentions.

12. Mr. Manish Kumar No.2, learned counsel for the appellant Gopi Lal in Criminal Appeal (DB) No. 1440 of 2018 has adopted the submissions advanced by Mr. Ajay Kumar Thakur.

13. Mr. Sujit Kumar Singh, learned APP appearing on behalf of the State, on the other hand, has submitted that all the members of the patrolling party as well as the informant, who had participated in effecting seizure, have supported the prosecution's case of recovery of liquid Opium from possession of these appellants. He further submits that it is evident from the evidence of the informant (PW-7) that the secret information, which was received by him, was taken down in writing and the information was communicated to his official superior. In the present case, the seizure list was prepared at the place of seizure and representative

sample was drawn in the presence of a Magistrate. He submits that as the remaining liquid Opium was produced at the trial by the prosecution as a material exhibit, the prosecution was able to establish its case of commission of offence punishable under Section 18 (b) of the NDPS Act beyond all reasonable doubts and the finding of conviction cannot be said to be suffering from any legal infirmity requiring this Court's interference.

14. On careful perusal of the evidence on record, we find that a seizure list witness PW-1 did not support the prosecution's case inasmuch as he deposed at the trial that when he was returning his home, he had seen only one person intercepted by the police on the road with a motorcycle and a bag. He deposed that as a matter of fact, the accused had fled away after leaving the motorcycle at the place of occurrence and he could not say as to what was recovered from the bag of the accused. Though he identified his signature, he deposed that his signature was obtained on a blank paper. He did not identify these appellants, who were present in court, as the persons who were apprehended by the police. In quick succession, we may take notice of the fact that the other seizure list witness, namely, Pawan Kumar (DW-1), in his examination-in-chief, deposed that he had put his signature on a paper at the police station and that there was one more signature

already available on the paper when he had put his signature. Nothing was mentioned in the paper on which his signature was obtained. He declined to identify the appellants and deposed specifically that he was seeing them for the first time in the court. He also deposed that nothing was recovered from the possession of these appellants. The gist of the matter is that none of the seizure list witnesses supported the prosecution's case while deposing as PW-1 and DW-1 respectively, rather their depositions are against the prosecution's case.

15. It would be apt, at this juncture, to notice the evidence of PW-7, the informant, who, while supporting the prosecution's case of receipt of the secret information, deposed that he had transmitted the information to PW-2, who was on patrolling duty, and had asked him to reach at *Kahudag Mor*; where these appellants were intercepted and when they attempted to flee they were apprehended. Though, he deposed at the trial that the information was given to his official superior, there is no documentary evidence adduced at the trial in support of this oral evidence.

16. PW-2 in his evidence deposed that he had received the information from the informant, whereafter the checking of the vehicles and search was conducted. The informant searched and

checked in the presence of two independent witnesses and after search of both the bags, two containers (*dibba*) had been recovered from each of the bags containing liquid Opium (6.800kg) in weight. The weight was taken using an electronic weighing machine, which was found in the bag recovered from the appellant Krishna Ram. We notice, at this juncture itself, that the weighing machine, said to have been recovered from the appellant Krishna Ram, was not produced as material exhibit at the trial.

17. PW-3, the investigating officer, deposed at the trial, *inter alia* that he had obtained sealed samples of the seized articles in the presence of a Magistrate under the orders of the learned Sessions Judge, Gaya. He had sent the seized samples to the CFSL, Kolkata. He proved the carbon copy of the forwarding letter relating to sending of the sample of the seized articles to the Joint Director, CFSL, Kolkata and FSL, Patna (Exhibit-5, 5/1) from which it transpires that the sample was sought to be sent to the Joint Director, Central Forensic Science Laboratory, Kolkata and FSL, Patna. Though the communication is of 08.09.2015, the sample was received by CFSL, Kolkata on 17.12.2015 through a messenger, as is evident from the FSL report itself. There is no evidence as to how and where the sample was kept from 08.09.2015 till the same was received by the Central Forensic

Science Laboratory, Kolkata on 17.12.2015. We find substance in the submission made on behalf of the appellants that delay of three months in sending the samples to the Forensic Science Laboratory is fatal to the prosecution's case as laid down by the Supreme Court in the case of ***Hansraj*** (supra). In case of ***Hansraj*** (supra), the High Court had acquitted the appellant on the ground of delay in sending of samples of contraband articles for scientific examination and there was no evidence to show how and in what condition the recovered contraband and samples were kept in the meanwhile. In the said case, the contraband (*charas*) was recovered on 17.07.1998 and sample packets were received in the laboratory on 22.08.1998. The Supreme Court, in case of ***Hansraj*** (supra), on the challenge, declined to interfere with the finding of acquittal recorded by the High Court.

18. In the present case, the evidence of PW-9 is crucial on the point of the manner in which the seized contraband, according to the prosecution, was stored during the pendency of the investigation and trial. PW-9 produced before the trial court four plastic containers, which were sealed, over which weights were mentioned as 800 gm, 1.350 kg, 2.600 kg and 2.050 kg, which came to be marked as material exhibits- I, II, III and IV. From the evidence of PW-9, it can be easily seen that case number

was not mentioned on either of the four containers. He was not able to say as to whether the four containers, which he was producing at the trial, were seized in connection with the same case. The signature of the person, from whom the containers were recovered, was also not there. The nature of the liquid, contained in the said four containers, were not mentioned nor malkhana register number was mentioned over them. In his cross-examination, he deposed that apart from the said four containers no other article was seized. His evidence is apparently contrary to the seizure list, according to which a digital weighing machine was also seized from the bag, which was in the possession of the appellant Krishna Ram. From the evidence of PW-9, in our opinion, the prosecution completely failed to prove at the trial that the material exhibits were the same from which the sample was taken and was sent to the Forensic Science Laboratory for examination. It is manifest from the evidence of PW-9 that the articles seized by the police were not kept in safe storage. The witness did not have any knowledge as to how the seized articles were kept. In this regard, it would be apt to notice the observations made by the Supreme Court in the case of *Mohanlal* (supra) made in paragraph 20-24.

" 20. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any

special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer-in-charge of a police station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by the learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government inasmuch as Standing Order No. 1 of 1989 has made specific provisions in regard to the same. Section III of the said Order deals with "Receipt of Drugs in Godowns and Procedure" which inter alia provides that all drugs shall invariably be stored in "safes and vaults" provided with double-locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle, juxtaposition to courts, etc. We may usefully extract Paras 3.2 to 3.9 comprising Section III supra at this stage for ready reference:

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

3.3. Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agency, who shall

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

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

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

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

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

3.8. The Heads of the respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to

monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

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

21. It is evident from a plain reading of Para 3.2 (supra) that storage of all drugs in safes and vaults has been made mandatory and that agencies of the Central and the State Governments have been permitted to designate their godowns for storage purposes. It is also clear that keeping in view the importance of protecting the seized drugs against theft, substitution or pilferage the Central Government has prescribed that such godowns shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agencies who shall exercise utmost care, circumspection and personal supervision over the storage facilities.

22. The provisions contained in Paras 3.5, 3.6, 3.7 and 3.8 also are aimed at ensuring that the godown or storage facility is satisfactory and those in-charge of the same are made accountable for its upkeep and effective management. Subsequent notification including Notification dated 16-1-2015 have in no way diluted the above requirement. The result is that there is a statutory framework which governs the storage of drugs and matters relating and incidental thereto. The question is whether the said statutory mechanism has been effectively implemented by the Central Government agencies and by the State

Governments. Our answer regrettably is in the negative.

23. It is evident from the responses received from the State and the Central Government agencies that no notified storage facility-godown has been established for storage of the seized drugs. Even the Narcotics Control Bureau has admitted to using malkhana of the Courts for storage of the seized drugs in certain cases and in certain circumstances. The Customs and Central Excise Department and DRI have also stated that they have no designated storage facility for storage of contraband. The position in the States is no different. Due to non-availability of any designated godown-facility with adequate vaults and double-lock system, the seized contraband is stored in Police Malkhana which is a common storage facility for all kinds of goods and weapons seized in connection with all kinds of offences including those specified by IPC. This is a totally unhappy and unacceptable situation to say the least.

24. It is indeed unfortunate that even after a lapse of 26 years since Standing Order No. 1 of 1989 was issued, the Central Government or its agencies and the State Governments have paid little or no attention to the need for providing adequate storage facilities of the kind stipulated in Standing Order No. 1 of 1989 with the necessary supervisory and other controls prescribed in Section III of the said order. The result is that while Standing Order No. 1 of 1989 very early in point of time recognised the need for providing adequate and effective storage facilities by the States and the Central Government agencies, the failure on the part of the Central Government and the State Governments to provide for such storage has defeated, if not completely negated

the very purpose underlying the said notification and the provisions made therein. There is as on date hardly any credible protection against theft, replacement, pilferage and destruction of the seized drugs on account of the wholly unsatisfactory and unscientific method of storage of drugs and psychotropic substances which at times hit the headlines in newspapers on account of what is often described by the agencies as "big catch" worth crores of rupees in the international market. What has defied our understanding is the neglect on the part of the Central Government and its agencies and the State Governments in realising the importance of the storage facilities and in providing for the same to prevent hazardous and at times lethal substances with great potential to do harm to those who use the same from being replaced, pilfered, stolen or siphoned out on account of very poor supervision, control or invigilation over such storage facilities."

19. Rest of the witnesses, who have attempted to support the prosecution's case, were members of the police party. As has been noted hereinabove, the seizure list witness have not only declined to support the prosecution's case of seizure of the articles in their presence, they have rather controverted the prosecution's case of recovery of contraband articles from these appellants in their depositions. Though the seizure list witness, PW-1, did not support the prosecution's case, he was not declared hostile. In such view of the matter, the prosecution's case that at the time of

seizure of the articles, the seizure list witnesses PW-1 and DW-1 were present with the officers is clearly contestable and discredited.

20. In view of the aforesaid discussions, we are of the view that the prosecution cannot be said to have proved commission of offence punishable under Section 18 (b) of the NDPS Act against these appellants. We do not consider it safe to uphold the conviction recorded by the trial court for more than one reasons. Firstly, delay of nearly six months in receipt of the sample by the FSL from the date of recovery of the alleged contraband articles has remained unexplained. The contraband articles can not be said to have been produced at the trial in the absence of the proof that what was being produced at the trial were the same articles, which were seized at the trial. The seizure list witnesses have not supported the prosecution's case, rather they have specifically controverted the case of prosecution of seizure of any article in their presence. The digital weighing machine, which was used for weighing the articles seized by the police officials, was not produced as material exhibit at the trial.

21. Accordingly, the impugned judgment recording finding of conviction of these appellants dated 01.10.2018 is

hereby set aside. The order of sentence dated 12.10.2018 is also set aside.

22. The appellants stand acquitted of the charge of commission of the offence punishable under Section 18(b) of the NDPS Act by giving them benefit of doubt. These appeals are accordingly allowed.

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

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/Nirmal-

AFR/NAFR	NAFR
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