



CRL.A(MD).No.148 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.12.2023

Pronounced on : 07.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.148 of 2021

Ganesan

.. Appellant/1st Accused

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.

(NCB, F.No.48/1/01/2016-NCB/MDU) .. Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records and set aside the sentence and conviction imposed in C.C.No.63 of 2017 on the file of the learned Principal Special Court for EC & NDPS Act Cases, Madurai vide judgment dated 23.12.2020.

For Appellant : Mr.Niranjan S.Kumar

For Respondent : Mr.C.Arul Vadivel @ Sekar

Special Public Prosecutor for NCB



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JUDGMENT

The appellant, who is the first accused in C.C.No.63 of 2017 on the file of the Principal Special Court for EC & NDPS Act Cases, Madurai filed this criminal appeal challenging the conviction and sentence imposed against him by the Principal Special Court for EC & NDPS Act Cases, Madurai. The learned trial Judge has passed the impugned order, dated 23.12.2020 and found the appellant guilty, convicted and sentenced him as detailed below:

<i>Accused</i>	<i>Convicted under Section</i>	<i>Sentence of Imprisonment/ fine imposed</i>
First Accused	Section 8(c) r/w 20(b) (ii)(C), 28 and 29 of Narcotic Drug Psychotropic Substances Act, 1985.	Rigorous Imprisonment for ten years each (3 counts) and to pay a fine of Rs. 1,00,000/-, each (3counts) in default to undergo Rigorous Imprisonment for one year.



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2. The brief facts of the case:

On 31.08.2016 at about 17.40 hours, on receiving the information by the intelligence Officer/P.W.1, Narcotics Control Bureau, Madurai, the NCB officials along with two independent witnesses namely Mohamed (P.W.3) and One Selvam went to Chittampatti fly over on Trichy-Madurai Highways, where they intercepted the offending car and accused persons. After introduction, the officer seized totally 85 kgs Ganja packed in 34 packets from them. They also drawn two samples 25 gms from each packets. Thereafter, summons was issued under Section 67 of Narcotic Drug Psychotropic Substances Act, 1985, (hereinafter, for the sake of brevity, referred to as “NDPS Act”), to the accused persons and on 01.09.2016, the intelligence officer obtained the voluntary statement from them. Thereafter, the Intelligent Officer arrested the accused persons and sent him for remand. Thereafter, the investigation was taken by the Intelligence Officer and he examined various witnesses and collected documents and necessary FSL report and completed the investigation. After completion of the investigation, the Intelligence



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Officer has filed a complaint against the appellant and another accused for the alleged offence under Sections 8(c) r/w 20(b)(ii)(c), 27(A), 28 and 29 of NDPS Act. Thereafter, the Principal Special Court for EC & NDPS Act Cases, Madurai, has taken on file in C.C.No.63 of 2017.

3. The learned trial judge after appearance of the accused served the copies under Section 207 of Cr.P.C. Then, he framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

4. To prove the case, the prosecution examined P.W.1 to P.W.5 and exhibited 38 documents as Ex.P.1 to Ex.P.38 and produced 108 material objects as M.O.1 to M.O.108. Thereafter, the accused was questioned under Section 313 Cr.P.C., by putting the incriminating materials and evidence against them and they denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witnesses on their side.



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5. The learned trial Judge, on considering the evidences and witnesses, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant preferred this appeal.

6. The learned counsel appearing for the appellant submitted that P.W.1 received the secret information on 31.08.2016 at about 17.40 hours stating that the appellant and another accused namely, A2 were carrying the substantial quantity of Ganja in the grey colour Tata Indica Car. Thereafter, the said information was reduced in writing and was conveyed to the Superintendent in charge NCB, Madurai Camp at NCB, Cochin, through the telephone. After receipt of the said information, P.W.2 Superintendent chalked out a action plan and directed to take necessary action. The said information was forwarded through the E-mail. According to the appellant's counsel, the information was marked under Ex.P.1. Ex.P.1 was received by P.W.2 through the E-mail. The said mail copy was not produced. P.W.2 made an endorsement on 01.09.2016, when P.W.2 was in the Cochin Office. When P.W.2 came to Madurai only on 01.09.2016, it is the duty of prosecution to explain how he made the



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endorsement on 01.09.2016 itself. The said discrepancy creates suspicion regarding the recovery of the contraband as alleged by the prosecution. Hence, he argued that the mandatory Section 42 of NDPS Act, has not been complied with.

6.1. The learned counsel further submitted that though the appellant has poor knowledge of Tamil, he does not know Tamil to read and he does not know Tamil to write. In the said circumstances, the prosecution case that the prosecution complied the requirement of Section 50 of NDPS Act, by submitting the notice under Ex.P.3 is found to be false one. When the prosecution case is that the recovery was made after search, the mandatory Section 50 of NDPS Act, has to be complied with. The same has not been complied. Hence, he seeks acquittal.

6.2. The learned counsel appearing for the appellant further submitted that Ex.P.20 detailed report, there is a signature of P.W.2. In the report, it is stated that he made an endorsement in the detailed report. It is unbelievable to make such an endorsement on 02.09.2016. There is no evidence to prove his presence on 02.09.2016.



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7. The learned Special Public Prosecutor appearing for the respondent Police submitted that the non production of the information is not material one. In this case, the information under Ex.P.1 was received by P.W.2. Thereafter, the said P.W.2 downloaded the said information and put the print out and made the following endorsement.

“The Information was conveyed to me over phone. I chalked out an action plan with regard to the team for search and directed further necessary action over phone.”

7.1. From the above endorsement, according to the learned Special Public Prosecutor, P.W.2 stated that he sent telephonic communication only to P.W.1 to proceed further. The said Ex.P.1 was produced after his arrival on 01.09.2016. Hence, there was no doubt regarding the information. The deposition of P.W.1 corroborated with evidence of the P.W.2 relating to the receipt of the said information. Hence, the mandatory Section 42 of the NDPS Act, has been clearly complied with.

7.2. The learned Special Public Prosecutor submitted that in this case, the recovery was made in the vehicle only. Therefore, the non



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compliance of Section 50 of NDPS Act, does not arise. He further submitted that the Honourable Supreme Court in the case of ***State of Punjab Vs. Baljinder Singh and another*** in ***Crl.A.No.s1565 and 1566 of 2019 (@ out of SLP (Crl) No.5659 to 5660 of 2019)***, it is specifically stated that there was no need to comply the condition under Section 50 of NDPS Act in the case of the recovery made in the vehicle or pant except the body of the accused. In this case, the recovery was made in the car. He also relied the following judgments of the Hon'ble Supreme Court:

(i)***Sama Alana Abdulla Vs. State of Gujarat*** reported in ***1996 1 SCC 427***

(ii)***Khet Singh Vs. Union of India*** in ***Crl.A.No.31 of 2000***

(iii)***Safi Mohammed Vs. State of Rajasthan*** in ***Crl.A.No.1954 of 2009***

(iv)***Than Kunwar Vs. State of Haryana*** reported in ***2020 5 SCC 260***

(v)***Surinder Kumar Vs. State of Punjab*** reported in ***2020 2 SCC 563***.

Hence, he seeks dismissal of the appeal.



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8.This Court has considered the submission made on either side and perused records and also the impugned orders and the precedents relied upon them.

9. Now, the question arising for consideration in this case is whether the conviction and sentence imposed by the learned trial Judge against the appellant is sustainable?

10. Compliance of Section 42 of the NDPS Act

From the records, P.W.1 received the secret information on 31.08.2016 at 17.40 hours. He also recorded the same and reduced in writing and the same was conveyed to P.W.2 through E-mail. Then P.W.2 directed P.W.1 to proceed further through telephonic conversation. The said information was marked as Ex.P.1. The receipt of the communication and downloaded the copy under Ex.P.1 with the endorsement of P.W.2 to proceed further through the phone also was recorded. The said document was also produced before the Court without any delay. The prosecution is duty bound to prove the compliance of Section 42 of NDPS Act as per



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the judgment of the Honourable Supreme Court reported in **2009 (8) SCC 539**. In this case, P.W.2 clearly deposed that he reduced in writing and informed the same to P.W.2/superior. The superior also deposed before the Court corroborating the said version that he received the information about the illegal transportation of the Ganja by A1 and A2. He also produced the document/Ex.P.2, which was marked without any objection, during the course of the trial. Hence, as per the version of the learned Special Public Prosecutor, in the Document Ex.P.2, it is clearly stated that the information was sent through the phone only to chalk out the plan. According to the learned counsel for the appellant, E-mail was not produced and hence, there was a doubt over the information sent through E-mail. On evidence, it is clear that P.W.2 received E-mail and downloaded the same and put the signature and thereafter he came to Madurai and produced before the Court. In the said report it is stated that he instructed P.W.1 through phone to conduct the raid. They conducted ride and found that the appellant and other accused transported 85 Kgs of Ganja in 34 pockets and seized the same after following the procedure. Therefore, this Court finds no merits in the submission of the learned counsel for the appellant that the requirement under Section 42 of NDPS



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Act is not complied with. In these circumstances, this Court comes to the conclusion that the prosecution established that the requirement under Section 42 has been complied with. Further, as per Constitution Bench judgment cited supra, the compliance of the report has been established. There was no question relating to the said non compliance caused prejudiced to the appellant. As per the judgment of the Honourable Supreme Court, if there is any infraction under Section 42 of NDPS Act, in complying the procedure, the appellant must establish that prejudice was caused to him. In this case, the appellant has not proved that any prejudice was caused to him. Apart from that, it is not the case of the non compliance of Section 42 of NDPS Act. During the course of the compliance, some in consequential things could have happened. When the evidence of P.Ws.1 to 3 are cogent and trustee worthy, the alleged infraction is not affected the prosecution case.

11. Plea of the non-compliance of Section 52A of the NDPS Act caused failure of justice.

11.1. The conjoined reading of Sections 41 to 44, 55 and 57 of the NDPS Act, shows that every authorised officer from the jurisdictional



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Police Station, the department of Central Excise, Narcotic Customs, Revenue Intelligence or any other department of Central Government etc., has reason to believe from personal knowledge or information given by any person and the same was reduced in writing that any Narcotic drug or Psychotropic substances or controlled substance in respect of which, offence punishable under this Act has been committed, they are entitled to search and seize the contraband. They are called “seizure officer”. They shall arrest the accused and produce the accused along with seized contraband to his immediate Superior of nearest police station or officer empowered under Section 53 of the Act. The said officers shall take necessary measure as may be necessary for the disposal, as per Section 52 of the Act. The said report shall be made within 48 hours from the time of either arrest or seizure. Under Section 55, the officer in charge of police station shall take charge of the contraband and keep in safe custody pending orders of the Magistrate. He also shall allow the said seizure officer to take sample of such contraband and seal the said sample with seal of officer in charge of Police Station. The Central Government issued a notification with guidelines to follow the procedure to take the sample from the recovered



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contraband and to keep the remaining contraband.

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11.1.1. That being the arrangement of the Section and the scheme of the Act, the Government have brought amendment in the year 1989 vide Act 2 of 1989 with the following statement of objects and reasons:

Amendment Act 2 of 1989-Statement of Objects and Reasons- In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill-over from such traffic has caused problems of abuse and addiction. The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishments for drug trafficking offences. Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drugs offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt.

2.A Cabinet Sub-Committee which was constituted for combating drug traffic and preventing drug abuse, also made a number of



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recommendations for strengthening the existing law. In the light of the recommendations of the Cabinet Sub-Committee and the working of the Narcotic Drugs and Psychotropic Substances Act, in the last three years, it is proposed to amend the said Act. These amendments, inter alia, provide for the following:-

(i)to constitute a National Fund for Control of Drugs Abuse to meet the expenditure incurred in connection with the measures for combating illicit traffic and preventing drug abuse;

(ii)to bring certain controlled substances which are used for manufacture of Narcotic Drugs and Psychotropic Substances under the ambit of Narcotic Drugs and Psychotropic Substances Act and to provide deterrent punishment for violation thereof;

(iii)to provide that no sentence awarded under the Act shall be suspended, remitted or commuted;

(iv)to provide for pre-trial disposal of seized drugs;

(v)to provide death penalty on second conviction in respect of specified offences



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involving specified quantities of certain drugs;

*(vi)to provide for forfeiture of property
and a detailed procedure relating to the same ;
and*

*(vii)to provide that the offences shall be
cognizable and non-bailable.*

11.1.2.Therefore, “to provide for pre-trial disposal of the seized contraband”, the 52 A was inserted on 29.05.1989, which 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



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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 4 [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 4 [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



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the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of 5 [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 1 [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.]



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11.1.3.Section 52 A aims at “*pre trial disposal of seized contraband*” with the sole object of avoiding pilferage of contraband and retruning to the marketplace for recirculation as it is vulnerable to theft and substitution, against the normal rule of destruction of the material after conclusion of the trial under Section 452 Cr.P.C., The said provision intends to authorise the post recovery procedure to dispose the seized contraband by the officer mentioned Section 52 to prove the case of the possession of the contraband by taking sample, by preparing inventory in the presence of the judicial Magistrate. Therefore, the prosecution is not prevented to prove the case of the possession of the contraband through legal evidence of the recovery witnesses. Once the possession of the contraband is proved, the legal presumption under Section 54 comes into play. Then, the culpable mental state on the part of the accused can be pressed into service under Section 35 of the Act. Therefore, in a similar contention raised before the Hon'ble Supreme Court in the case of ***State of Punjab v. Makhan Chand***, reported in ***(2004) 3 SCC 453***, the Hon'ble Supreme Court has rejected the same with the following findings:

“9. Learned counsel for the respondent-



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accused relied on certain standing orders and standing instructions issued by the Central Government under Section 52-A(1) which require a particular procedure to be followed for drawing of samples and contended that since this procedure had not been followed, the entire trial was vitiated.

10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by



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sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.”

11.1.4.In the case of ***Kallu Khan v. State of Rajasthan***, reported in ***2021 SCC OnLine SC 1223*** it has been held as follows:

*“13. At this state, the argument advanced by the appellant regarding non-production of contraband in the court due to which benefit of doubt ought to be given to accused, is required to be adverted to. In the case of *State of Rajasthan v. Sahi Ram*, (2019) 10 SCC 649, this Court held that when the seizure of material is proved on record and is not even disputed, the*



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*entire contraband material need not be placed on record. It is not a case in which the appellant has proved beyond reasonable doubt that while sending the samples for forensic tests, seals were not intact or the procedure has been materially not followed by protecting the seized substance or was not stored properly, as specified in the case of **Mohan Lal (supra)** in which case the directions were given to be followed on administrative side. However, in the facts of the case, the said judgment is not of any help to appellant.*

*9.10. The Hon'ble Supreme Court held that even non-production of the entire contraband before the Court is not fatal when the seizure was proved and the sample taken from the said seized contraband is proved. In this aspect, it is relevant to the judgment of the Hon'ble Supreme Court in **Than Kunwar v. State of Haryana**, (2020) 5 SCC 260: (30. The Court also went to hold in **Sahi Ram [State of Rajasthan v. Sahi Ram**, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85] that if seizure is otherwise proved on record and it is not even doubted or disputed, it need not be placed before the Court. The Court further held that if the*



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seizure is otherwise proved what is required to be proved is the fact that samples taken out of a contraband are kept intact. This Court held as follows : (SCC pp. 657-58, paras 15-16 & 18)

“15. It is true that in all the aforesaid cases submission was advanced on behalf of the accused that failure to produce contraband material before the court ought to result in acquittal of the accused. However, in none of the aforesaid cases the said submission singularly weighed with this Court to extend benefit of acquittal only on that ground. As is clear from the decision of this Court in Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , apart from the aforesaid submission other facets of the matter also weighed with the court which is evident from paras 7 to 9 of the decision. Similarly in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] , the fact that there was no explanation where the seized substance was kept (para 11) and the further fact that there was no evidence to connect the forensic report with the substance that was seized (para 12) were also relied upon while extending



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benefit of doubt in favour of the accused. Similarly, in Vijay Jain [Vijay Jain v. State of M.P., (2013) 14 SCC 527 : (2014) 4 SCC (Cri) 276] , the fact that the evidence on record did not establish that the material was seized from the appellants, was one of the relevant circumstances. In the latest decision of this Court in Vijay Pandey [Vijay Pandey v. State of U.P., (2019) 18 SCC 215] , again the fact that there was no evidence to connect the forensic report with the substance that was seized was also relied upon to extend the benefit of acquittal.

16. It is thus clear that in none of the decisions of this Court, non-production of the contraband material before the court has singularly been found to be sufficient to grant the benefit of acquittal.

18. If the seizure of the material is otherwise proved on record and is not even doubted or disputed, the entire contraband material need not be placed before the court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the court. At times the material could be



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so bulky, for instance as in the present material when those 7 bags weighed 223 kg that it may not be possible and feasible to produce the entire bulk before the court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.”

31. In the facts of this case, no doubt the contraband article weighed 6 kg 300 gm. A perusal of the judgment of the trial court does not appear to suggest that the appellant had taken the contention regarding non-production of the contraband before the trial court.

11.2. From the above discussion, it is clear that Section 52 A of the NDPS Act deals with disposal of the seized contraband and it is not related to the seizure from the scene of the occurrence. Therefore, this Court is unable to accept the submission of the learned counsel for the appellant that the failure on the part of the investigating agency to



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destruct the contraband as per the procedure contemplated under Section 52A of the NDPS Act is a ground to acquittal without going into the legal evidence available to prove the possession of the contraband, seizure of the contraband, the arrest of the accused, taking of the samples, forwarding of the samples and the remaining contraband along with accused immediately after the arrest to the Court and the production of the remaining samples, chemical analysis report and the remaining contraband physically as a material object. Once the above facts are proved through the evidence, the presumption under the Act will come. Therefore, the interpretation to Section 52 A of the NDPS Act, is made to achieve the object of NDPS Act.

11.3. The drugs are made to cure the illness and the diseases and to alleviate the pain during ailment. But, the People misused the same for illegitimate purpose and therefore, drug abuse has become a social problem. The NDPS Act was originally brought in the year 1985. Subsequently, to make it stringent, an amendment was brought in the year 1989 with the object stated supra.



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11.4.According to the data, 1.58 Crores children aged between 10 to 17 years are addicted to drugs. The effect of the drug abuse includes disease transfection, criminal behaviour, social disorder and even death and suicide. According to the data, the suicide as a result of a drug abuse has increased to unimaginable and alarming percentage.

Year	Number of suicide due to drug abuse
2011	3658
2016	5199
2017	6705
2018	7193
2019	7860
2021	10560

ie., As per the data available from the NCRB, death by suicide attributed to drug abuse and alcohol addiction continue to increase at the rate of atleast one death in every hour. Further, as per the data, in the year 2018, due to the drug over dose, 875 deaths has occurred and in the year 2019, 704 deaths. Therefore, there is an alarming situation, which required immediate action. Therefore, Government brought in Section 52A with object of disposal of a drugs immediately after the seizure. Therefore, Section 52 A should be so interpreted to avoid unworkable or impracticable results. The said principle was fortified in the case of



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Sheffield City Council vs. Yorkshire Water Services Ltd., reported in ***(1991) 1 WLR 58 : (1991) 2 All ER 280J , WLR at page No.71***, and held as follows:

“Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. ‘... the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society’.”

11.4.1. The Hon'ble three benches of Supreme Court reiterated the said principle by interpreting Section 50 of the Act in the case of the ***State of H.P. v. Pawan Kumar, (2005) 4 SCC 350 : 2005 SCC (Cri) 943 : 2005 SCC OnLine SC 714 at page 363***



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18. There is another aspect of the matter, which requires consideration. Criminal law should be absolutely certain and clear and there should be no ambiguity or confusion in its application. The same principle should apply in the case of search or seizure, which come in the domain of detection of crime. The position of such bags or articles is not static and the person carrying them often changes the manner in which they are carried. People waiting at a bus-stand or railway platform sometimes keep their baggage on the ground and sometimes keep in their hand, shoulder or back. The change of position from ground to hand or shoulder will take a fraction of a second but on the argument advanced by learned counsel for the accused that search of bag so carried would be search of a person, it will make a sharp difference in the applicability of Section 50 of the Act. After receiving information, an officer empowered under Section 42 of the Act, may proceed to search this kind of baggage of a person which may have been placed on the ground, but if at that very moment when he may be about to open it, the person lifts the bag or keeps it on his shoulder or some other place



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on his body, Section 50 may get attracted. The same baggage often keeps changing hands if more than one person are moving together in a group. Such transfer of baggage in the nick of time when it is about to be searched would again create practical problem. Who in such a case would be informed of the right that he is entitled in law to be searched before a Magistrate or a gazetted officer? This may lead to many practical difficulties. A statute should be so interpreted as to avoid unworkable or impracticable results. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

“The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong.”

20. *As pointed out in State of Punjab v. Baldev Singh [(1999) 6 SCC 172 :*



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*1999 SCC (Cri) 1080] drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. Reference in the said decision has also been made to some United Nations Conventions Against Illicit Trafficking in Narcotic Drugs, which the Government of India has ratified. **It is, therefore, absolutely imperative that those who indulge in these kind of nefarious activities should not go scot-free on technical pleas** which come handy to their advantage in a fraction of a second by slight movement of the baggage, being placed to any part of their body, which baggage may contain the incriminating article.*

11.5.Before the implementation of the Narcotic Drugs and Psychotropic Substance (Seizure, Storage, Sampling and disposal) Rules



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2022 which commenced from 23 December 2022, not even Section 52A of the NDPS Act demanded taking of samples at the spot. The Notification No.1/1989 prescribed procedure to take samples, seizure and the disposal. The authorities has strictly followed the procedure during the course of taking samples, seizure and produced before the Court. Therefore, considering the drug menace which has been causing pernicious effect to large Sections of society namely, life of the youths and innocent persons, the unworkable interpretation has to be avoided. Hence, this Court holds that when physical production of the contraband and sealed samples are duly made before the Court, the Court has to take into account the same without going into the issue of the non-compliance of the post seizure procedure, which is intended for avoidance of re-circulation, in order to convict the accused for the possession of the contraband against the law.

11.6. From the above reading of the “*Mohanlal case*” I II III, it is clear that Section 52 A prescribed procedure to be followed post seizure of the contraband to ensure prompt destruction of the contraband so that seized materials may not be misused. The said direction has been issued



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only on considering the submission of the prosecution that seized contraband were disposed of without taking samples and preserving the remaining contraband as per the Central Notification No.1/89 ie., on the basis of the specific observation in Paragraph No.13 of Mohanlal case III that “*except Directorate of Revenue Intelligence, most the States, however claim that no samples are drawn at the time of the seizure. The DRI alone claims that sample are drawn at the time of seizure.*”

11.6.1.The Hon'ble Supreme Court in Paragraph No.12 of the *Mohanlal Case (mohanlal III- reported in 2016 (3) SCC 379)* has held as follows:

Seizure and sampling

12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government has in exercise of that power issued Standing Order No. 1 of 1989 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent



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standing orders one dated 10-5-2007 and the other dated 16-1-2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of Standing Order No. 1 of 1989 states that samples must be taken from the seized contraband on the spot at the time of recovery itself. It reads:

“2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.”

13. Most of the States, however, claim that no samples are drawn at the time of seizure. Directorate of Revenue Intelligence is by far the only agency which claims that samples are drawn



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at the time of seizure, while Narcotics Control Bureau asserts that it does not do so. There is thus no uniform practice or procedure being followed by the States or the Central agencies in the matter of drawing of samples. This is, therefore, an area that needs to be suitably addressed in the light of the statutory provisions which ought to be strictly observed given the seriousness of the offences under the Act and the punishment prescribed by law in case the same are proved. We propose to deal with the issue no matter briefly in an attempt to remove the confusion that prevails regarding the true position as regards drawing of samples.

11.6.2.The original facts of Mohanlal Case (Mohanlal Case -I reported in 2012 (7) SCC 712), have made it clear that the Union of India has preferred appeal against the acquittal. The High Court dismissed the appeal on the ground that the prosecution failed to prove the seizure of the contraband beyond reasonable doubt and hence, the prosecution case of destruction of the contraband without taking sample as per Section 52A of NDPS Act, cast doubt over the prosecution case. In the said appeal, considering the re-circulation of the seized contraband, the



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Hon'ble Supreme Court called the States to furnish the details of the seizure, storage, disposal/destruction particulars. Before issuing the said direction, the Hon'ble Supreme Court has observed as follows in Paragraph No.11 of the judgment in the case of ***Union of India v. Mohanlal*** reported in 2012 7 SCC 712 at **page 715**

11. We find considerable merit in the submissions made by Mr Sinha. The problem is both widespread and formidable. There is hardly any State in the country today which is not affected by the production, transportation, marketing and abuse of drugs in large quantities. There is in that scenario no gainsaying that the complacency of the Government or the officers dealing with the problem and its magnitude is wholly misplaced. While the fight against production, sale and transportation of the narcotic drugs and psychotropic substances is an ongoing process, it is equally important to ensure that the quantities that are seized by the police and other agencies do not go back in circulation on account of neglect or apathy on the part of those handling the process of seizure, storage and destruction of such



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contrabands. There cannot be anything worse than the society suffering on account of the greed or negligence of those who are entrusted with the duty of protecting it against the menace that is capable of eating into its vitals. Studies show that a large section of the youth are already victims of drug abuse and are suffering its pernicious effects. Immediate steps are, therefore, necessary to prevent the situation from going out of hand.

11.6.3. Thereafter, after considering the data, the Hon'ble Supreme Court issued a direction in the case of ***Union of India v. Mohanlal***, reported in **(2016) 3 SCC 379**, which reads as follows:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as



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discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

11.7.The above direction contains two parts:

(i) No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act.

(ii) The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

11.8. Both the directions relate to the procedure to be followed after the seizure. The said direction was issued on finding that there was no



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compliance of the procedure of taking sample at the occurrence place at the time of the seizure as per the Central Government Notification No. 1/1989. Therefore, the intention of the guidelines issued by the Hon'ble Supreme Court is that in case of failure to take sample and to prove the case of the seizure, the prosecution has final opportunity to produce the entire contraband and take the sample in the presence of the learned Judicial Magistrate upon making the application and cause destruction of the contraband. From the above, it is clear that the compliance of the above direction issued by the *Mohanlal Case No.II*, to take inventory is the post seizure procedure to prevent the recirculation of the contraband. In the said circumstances, in the case wherever the contraband was seized after taking the samples as per the Notification No.1/1989 and forwarded to the competent officer as per Section 52 and the accused along with the seized contraband are produced before the competent Court and the competent Court received the contraband and issued a direction to keep the contraband in proper custody and the same has been properly supervised and the same has been also produced before the trial Court at the time of the trial as a material object, as a physical evidence, the same cannot be brushed aside on the ground that the investigating agency



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violated the second part of the direction of the ***Mohanlal Case No.II***, by not disposing of the seized contraband by making the application under Section 52A of NDPS Act.

11.9.The Mohanlal Case, is applicable only to the cases where there is a failure of physical production of the contraband as a material object and not in all circumstances. The same was considered by the Hon'ble Supreme Court before and after the Mohanlal case and the Hon'ble Supreme Court has held that the said non-compliance is not fatal to the prosecution when the prosecution proved the factum of seizure of the contraband beyond reasonable doubt and also proved the seized materials by producing the same before the trial Court as a material object and identified the same, through the material witnesses as per law.

11.10.Now this Court adverts to the facts of the present case whether the prosecution proved the possession of the contraband, seizure and production of the contraband before the Court in accordance with the provision of the NDPS Act and the Notification No.1/1989 ?



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11.11. To address the issues, it is relevant to extract the various provisions of the NDPS Act:

Section 52 of the NDPS Act	Section 55 of the NDPS Act
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) <i>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</i> 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, <i>take such measures as may be necessary for the disposal according to law of such person or article.</i>	Police to take charge of articles seized and delivered.— An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, <i>all articles seized</i> under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or <i>to take samples of and from them</i> and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

From the reading of Section 52 of the NDPS Act, it is clear that the Investigating officers shall arrest and seize the contraband. The arrestee and the seized contraband shall be forwarded to the Magistrate without unnecessary delay. The arrestee and the seized articles should also be forwarded to the officer in charge of nearest police station or the officer



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empowered under Section 53 of the NDPS Act. The said police officers to whom the arrestee and the seized articles are forwarded are the officers under Sub Sections 2 and 3 of Section 52 of the NDPS Act, who have to take charge of and take such measures as may be necessary for the disposal according to law of such persons or article. Disposal of the arrestee has been made through the remand by the Magistrate. The disposal of the seized article has been made through entrusting the custody to the officer mentioned in Section 55 of the NDPS Act.

11.11.1. The officer who has received the seized article from the officer mentioned in the NDPS Act is to act as per Section 55 of the NDPS Act and should take charge of the said seized articles and keep in the safe custody either by affixing the seal to such articles or allow to take samples of and from them and all sample so taken shall also be sealed with a seal of office in charge of police station, till the orders of the Magistrate. Therefore, from the reading of Sections 52 and 55 of the NDPS Act, the disposal of the seized articles by the ground level officers ends with entrustment of the same with the officer mentioned in Section 55 of the NDPS Act. The officer mentioned in Section 55 of the NDPS



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Act, is duty bound to keep safe custody of the properties till the orders of the Magistrate. This original position of the Act before the incorporation of Section 52A of the NDPS Act, ie., 29.05.1989, is that the Union Government had issued the notification No.1/1989, in the form of instruction to the investigating officer to follow the procedures during the course of the arrest and seizure of the articles with the accused person.

11.12. Since the question of the compliance of the procedure is factual aspect and only in the case of the non compliance which cause failure of justice and creates doubt over the prosecution case over the recovery, this Court is duty bound to consider the same. On perusal of the entire material and other records and careful appreciation of the deposition of the witnesses and the explanation furnished by the appellant during the course of the questioning under Section 313 of Cr.P.C., this Court finds that the appellant never raised the said plea during the entire course of the trial. But, the learned counsel argued that the non-compliance amounts to failure of justice, and this Court is duty bound to see any failure of justice has occurred. In this case, the



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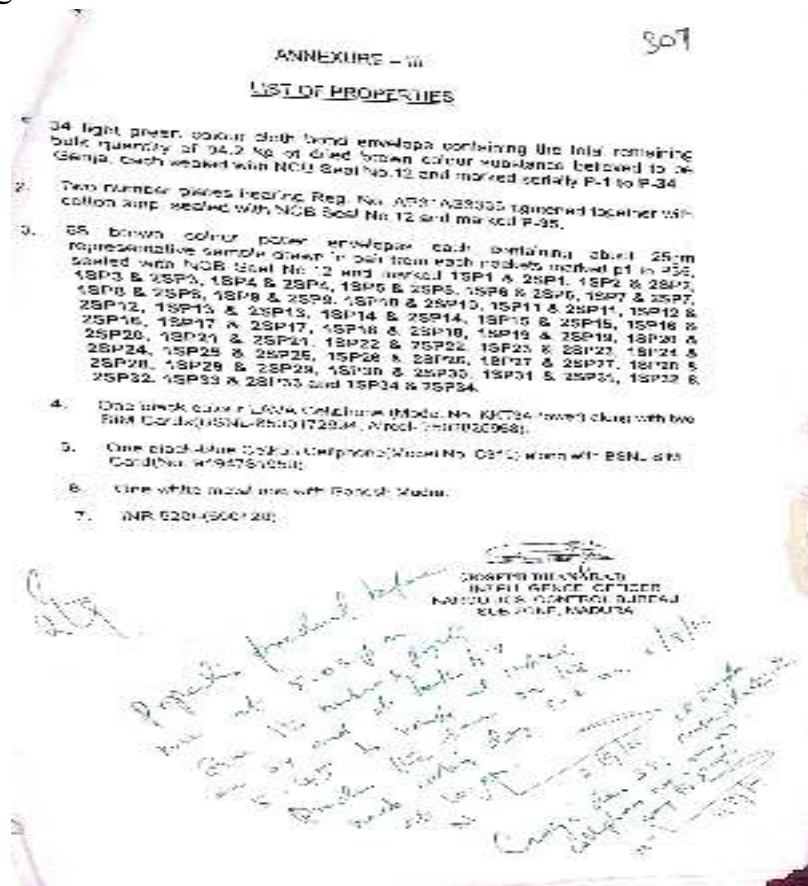
Intelligence Officers recovered 85 Kgs., of Ganja in 34 bags. The samples of 25 grms, were drawn from each 34 bags as per the procedure stated in the notification issued by the Central Government. The samples were separately packed and sealed with “NCB seal”. Similarly, the remaining contraband were separately packed and sealed with “NCB Seal”. The mahazar was prepared. After completion of the said search and seizure, the appellant and another accused were summoned under Section 67 of the NDPS Act and thereafter, they were enquired and their statements were recorded on 01.09.2016d and they were remanded on 02.09.2016. At the time of the remand itself, the entire contraband seized and packed with seal and the samples taken from each 34 bags were produced before the learned Special Judge. The learned Special Judge accepted the remand and verified the Ganja in 34 bags and 68 samples and other material objects namely cell phone, number plates and cash. After that the said contraband was directed to be kept in the godown by assigning the R.P.R.No.268of 2016 and the said remaining contraband were produced before the Court at the time of examination of the witnesses and the witnesses identified the said remaining contraband and also the remaining quantity of the contraband in the samples returned



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from chemical analysis lab, which has also been marked. The appellant never raised any dispute over the above events. The Intelligence Officer prepared the list of properties in annexure No.III, and produced before the learned Special Judge along with the remand request and the learned trial Judge verified the same and acknowledged the same by making the following endorsement:





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11.13. The said annexure No-III forms part of the record and the same was treated as inventory as contemplated under Section 52A of the NDPS Act. Further the material objects were also identified by the witnesses during the course of trial. Therefore, annexure No.III satisfied the “identity” of the contraband as per the Act. When the prosecution has taken a stand that the samples were taken at the spot and the samples along with the remaining contraband were produced before the Court as physical evidence, Section 52A of the NDPS Act is not applicable. In this case as stated above, sample was taken at the spot and both samples and remaining contraband were produced before the learned Special Judge at the time of initial remand and the same was produced from the godown of NCB and the godown receipt has also been marked under Ex.P.30 during the course of the trial and the contraband was identified by the witnesses. In this case, from the above narration of the proved events beyond reasonable doubt, this Court finds no failure of justice. Without any proof of failure of justice, the failure of the investigating officer to take steps to dispose the contraband as per Section 52A of NDPS Act cannot be a ground for acquittal and the same was fortified by the



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following observation of the Judgment of the Hon'ble Supreme Court in the case of *State of Punjab v. Balbir Singh*, reported in (1994) 3 SCC 299 at page 320

24.... But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore it has to be shown that such non-compliance has caused prejudice and resulted in failure of justice. The officers, however, cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution.

Hence, this Court is not inclined to accept the plea of that violation of Section 52A of the NDPS Act affected the entire prosecution case.



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11.14. The appellant relied the judgment of the Hon'ble Supreme Court reported in *2023 Live Law (SC) 570* in the case of *Simarnjit Singh Vs. State of Punjab*. In the relied judgments of Hon'ble Supreme Court, it is found that the recovered contraband was not produced. Therefore, the Hon'ble Supreme Court acquitted the appellant considering the said fact and other circumstances also. In this case taking of sample in the occurrence place, production of the remaining contraband along with samples before the Court at the time of the remand and producing the same before the trial Court, during the trial and marking as material objects leaves no room for suspicion. Apart from that, guidelines of Standing Order 1/89 has been followed in this case. When there is no plea of destruction or disposal, the question of compliance Section 52A of the NDPS Act does not arise.

12.Compliance of Section 50 of the NDPS Act:

In this case, contraband was not recovered from the accused body and the recovery was made in the private car in which he travelled. In the



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said circumstances, the submission of the learned counsel for the appellant that non-compliance of Section 50 of the NDPS Act, is fatal to the prosecution cannot be accepted. Even otherwise, in this case, the same was complied with and the same was proved through Ex.P4 and the evidence of P.W.1. According to the appellant in Ex.P4, it is stated that the appellant consented for search by the NCB Officers and the same was written in Tamil. He also subscribed his signature in Tamil. According to the learned counsel for the appellant, he does not know to write in Tamil. In order to appreciate the same, this Court perused the records. During the course of trial, charge was framed and the Court questioned the appellant and he denied and pleaded not guilty. In the said questioning his signature was found in Tamil, namely, “P.கணேசன்”. Similarly, after completion of trial, he subscribed his signature in Tamil even at the time of the question of sentence. Apart from that, he also made the specific endorsement in the original judgment “தீர்ப்பின் நகல் பெற்றுக்கொண்டேன் P.கணேசன்” Therefore, the contention of the learned counsel for the appellant that he does not know to write in Tamil cannot be accepted. Hence, the plea by the learned counsel for the appellant that the appellant does not know Tamil is also not accepted.



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12.1.In this case, recovery was made from the car and not from the body of the accused. Hence, the submission of the learned counsel for the appellant that non compliance of section 50 of NDPS Act, is fatal to the prosecution cannot be accpeted. He further submitted that Ex.P4 is relating to A2 for the compliance report of under Section 50. In this report, it is stated that the A2 put the signature English does not amount to compliance.

12.2. This Court considered the submission relating to the above issue and came to the conclusion that the Ganja was recovered from the accused in the car bearing Registration No. TN 07 AS 3335 without any doubt. In this circumstance, the signature of the said Accused No.2 namely Atchuthbabu to be considered independently. Hence, this Court holds that the non compliance of Section 50 does not arise.

13.Non-compliance of Section 57 of the NDPS Act:

According to Section 57 of the NDPS Act, whenever, any person makes any arrest or seizure, he shall within 48 hours shall make full report of the particulars of arrest and seizure to his immediate official



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Superior. According to the learned counsel appearing for the appellant that the Section 57 of NDPS Act, has not been complied with. But the learned Additional Public Prosecutor argued that the report under Section 57 of NDPS Act, was sent to P.W.2 and he has also endorsed the receipt and the same was marked as Ex.P.9. This Court perused Ex.P.9 and the evidence of P.W.2. P.W.2 clearly deposed that he received the said report on 01.09.2016 and the said Ex.P.9 was produced and marked without any objection. P.W.2 was cross examined and no answer was elicited to disbelieve his version. Further the said report was also received by the Court in proper time. P.W.2 also deposed that he received the said information from P.W.1 and he has also deposed that he sent a report to P.W.2. On reading of report of P.W.1 and 2, it is clear that under Ex.P.9 the prosecution proved the compliance of Section 57 of NDPS Act. Even otherwise as per the judgment of the Hon'ble Supreme Court, non-compliance of the Section 57 of the NDPS Act does not vitiate the prosecution case, and the same was fortified by the following judgment reported in **(2021) 14 SCC 334** in the case of **Gurmail Chand v.**

State of Punjab

10. Insofar as submissions on the basis of Section



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*57 of the NDPS Act are concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the entire proceeding shall be vitiated. “The provision has been held to be directory and to be complied with but merely not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding.” A three-Judge Bench of this Court in *Sajan Abraham v. State of Kerala* [*Sajan Abraham v. State of Kerala*, (2001) 6 SCC 692 : 2001 SCC (Cri) 1217] has held that “non-compliance of Section 57 would not vitiate the prosecution case.” In para 12 the following was laid down : (SCC pp. 696-97)*

12. The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence, the entire case is vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find,



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which is also recorded by the High Court, that PW 5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext. P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW 5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW 5 has sent all the relevant material to his superior officer immediately. Thus, we do not find any violation of Section 57 of the Act.”

Therefore, the contention of the appellant the Section 57 of NDPS Act is not complied with cannot be accepted.

14. Hostility of the independent witnesses

In this case, the recovery was made in the presence of two



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independent witnesses. One independent witness died and another independent witness P.W.3 turned hostile. But, he admitted the fact that contraband was recovered on the date of occurrence in the occurrence place and weighing was made and his signature was obtained. He also admitted his signature in Ex.P.5. It is settled principle that even if witness declared hostile, the portion of the evidence supporting the prosecution case can be considered. In this case, P.W.1 and P.W.4 cogently deposed the entire events and the recovery of the contraband. Even though they are subjected to the cross examination, no material was elicited to disbelieve their presence in the scene of the occurrence and the recovery. Further, the tollgate receipts were recovered and the time was matched with the time alleged by the prosecution. The respondent Police has recovered Ganja on that day at the same place is admitted by him. The entire contraband and the samples along with the accused produced before the Court at the time of remand. It is settled principle merely because the independent witness turned hostile, the same cannot be a reason to reject the evidence of the police officers and the member of the raiding parties. In this case, the witness clearly admitted the signature in the documents and the recovery of the contraband at the relevant point of



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time. Hence, the submission of the learned counsel for the appellant that the prosecution has not proved the recovery on the ground that the independent witness turned hostile deserves to be rejected.

15.Other incriminating Circumstance:

Presence of two number plates inside the car with different numbers is one of the additional incriminating materials to presume the petitioner travelled from Andhra Pradesh with contraband. The original number of the car is AP 31 AS 335 but the number plate with TN 07 AS 3335 was seized by the officers at the time of search. Hence, the appellant transported Ganja with the fraudulent number plates, which additional incriminating circumstance to prove the involvement of the appellant in the transportation of the huge quantity of Ganja.

15.1.In this case, as narrated above, both accused travelled in the private car with the manipulated number plates and carried 85 Kgs., of Ganja and hence, their conscious possession stands proved. Once, the conscious possession was proved the presumption under Section 54 of the NDPS Act comes into operation. To rebut the said presumption, it is



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the duty of the appellant to prove his case beyond reasonable doubt as per following Section 35 of the NDPS Act:

35. Presumption of Culpable Mental State: (I) *In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

Explanation_ in this section “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this Section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability

15.2.Therefore, in this case, from the above discussion, the prosecution proved the case of conscious possession of 85 Kgs, of Ganja in the car beyond reasonable doubt against the appellant and another accused. Further, the appellant neither gave any explanation nor rebutted



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the presumption through the legal evidence. Hence, there is no ground to interfere with the judgment of the Court below. In addition to that, the learned trial Judge awarded only 10 years of rigorous imprisonment and directed to pay a fine of Rs.1,00,000/- without imposing the enhanced sentence, considering his involvement in the earlier case.

16. Accordingly, the conviction and sentence passed by the learned Principal Special Court for EC & NDPS Act Cases, Madurai, in C.C.No.63 of 2017, dated 23.12.2020 is hereby confirmed and the Criminal Appeal is dismissed.

07.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal Special Court
for EC & NDPS Act Cases,
Madurai.
- 2.The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

vsg

Pre delivery Judgment made in
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07.03.2024