

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-693-2019 (O&M)
Reserved on: 28.02.2024
Date of decision: 6.03.2024

CHAKWUMA ANTHONY

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Ms. Manpreet Ghuman, Advocate for
Mr. Arjunveer Sharma, Advocate
for the appellant.

Mr. Arun Gupta, DAG, Punjab.

Mr. Ankur Mittal, Addl. AG Haryana (as *Amicus Curiae*) with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 24.07.2019, upon Sessions Case No. NDPS:93 of 1.9.2016, by the learned Judge, Special Court, Patiala, wherethrough she convicted the appellant for a charge drawn *qua* an offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a separate sentencing order drawn, on 25.07.2019, she proceeded to impose upon the convict sentence of rigorous imprisonment extending upto a period of 15 years, besides imposed sentence of fine of Rs.1,50,000/-, besides in default of payment of fine amount, she sentenced the convict to undergo rigorous imprisonment extending upto a period of one year.

2. The accused-appellant became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (supra), as became upon the appellant. Resultantly, the aggrieved instituted thereagainst instant appeal bearing No.CRA-D-693-2019.

FACTUAL BACKGROUND

3. The genesis of the prosecution case are that, on 23.3.2016, Inspector Harbinder Singh, alongwith ASI Nahar Singh, HC Bachan Singh and other police officials, in government vehicle bearing no. PB 11AT 2319 in connection with patrolling and search of bad elements, was present in the area of village Uppalheri, opposite Jashan Hotel, G.T. road leading from Rajpura to Sirhind. At about 2:00 pm, one white colour Swift Dzire car, bearing no. DL 1YD 2388, was spotted coming from Rajpura side, which was being driven by one Hindu gentleman and another Hindu Negro type gentleman was sitting on the rear seat. On seeing the police party, the driver of the car tried to reverse it. The car was stopped on the basis of suspicion. On being enquired about the name and parentage from the occupants of the car, the driver disclosed his name as Anil Kumar, son of Mulakh Raj, resident of Najafgarh, Delhi. On further enquiry, the said person revealed that he has been sent by his owner Suresh Kumar, son of Babu Lal, resident of Mohan Garden, New Delhi with the Nigerian passenger as the passenger did not know local language. Then, the person sitting on the rear seat disclosed his name as Chakwuma Anthony, son of Ogwoo, resident of Umunya, Town Ajak Pani, State AnamBara, Nigeria, now resident of Uttam Nagar Navada, New Delhi. The Investigating Officer revealed his own identity to the accused persons and apprised the accused of his suspicion that accused are in possession of some narcotic substance in their car. Accused were also apprised of their legal right to give search in the presence of Gazetted Officer or a

Magistrate. However, accused reposed faith in the Investigating Officer and consent memos, Ex.P1 of Anil Kumar and P2 of Chakwuma, to this effect, were reduced into writing. On search of the car, from the bag placed on the thighs of Chakwuma, white colour powder was recovered. The same was tested with the help of drug kit and was found to be Heroin, which on weighment, came out to be 1 kg, which was converted into parcel. The bulk parcel was sealed with seal bearing impression "GS". Sample seal Ex.P3 was prepared separately. After use, the seal was handed over to ASI Nahar Singh. The Investigating Officer proved recovery memo of contraband Ex.P4, recovery memo of car, along with RC and passport of accused Chakwuma Ex.P4/1, personal search memos Ex.P9 of accused Anil Kumar and Ex.P10 of accused Chakwuma, arrest-cum-intimation memo of accused Ex.P8, and deposed to the effect that ruqa Ex.P5 was sent to the police station, on the basis of which formal FIR, Ex.P6, was registered and rough site plan of place of recovery Ex.P7 was prepared. The Investigating Officer further deposed that he then directed SI Baldev Singh to apprehend accused Sunil Kumar from Delhi and sent accused Anil Kumar with HC Bachan Singh to SI Baldev Singh. The police party, headed by SI Baldev Singh went to Delhi to apprehend accused Suresh Kumar, owner of the car. On return to the police station, the Investigating Officer deposited the case property with the MHC of the Police Station and accused Chakwuma was sent behind bars. On 24.3.2016, when accused Suresh Kumar was also arrested, the Investigating Officer produced the bulk parcel and all the three accused before the learned Judicial Magistrate, alongwith application Ex.P12 and inventory Ex.P13. The learned Magistrate broke open the bulk parcel and withdrew two samples of 10 gram each of Heroin and converted them into parcels. The representative sample parcels and bulk parcel were sealed by the learned Magistrate with seal bearing impression "AB". Sample seal Ex.P14 was also prepared and the learned

Magistrate passed order Ex.P15. However, the case property could not be deposited in judicial *Malkhana* due to holiday and it was re-deposited with the MHC. The Investigating Officer further deposed to the effect that on 28.3.2016, MHC Baljinder Singh produced sample parcel, bearing impression AB before him and he put the same in another parcel and sealed the same with his seal bearing impression "HS" and issued secret code No.004/2016 and handed over the same to HC Darhsan Lal for depositing the same in FSL after getting secret code issued from DPO, Patiala. The witness also directed the MHC to get deposited the remaining case property in judicial *Malkhana*. After receipt of report from Chemical Examiner Ex.P16 and on completion of other necessary formalities, challan was prepared by SI Baldev Singh. The representative sample was produced in the trial Court as Ex.MO/1, bag as Ex.MO/2, passport of accused Chakwuma Ex.MO/3, RC of car Ex.MO/4.

Trial Court Proceedings

4. On completion of investigations, challan was filed in the trial Court against the accused. On their appearance before the learned trial Court, all the accused were charge sheeted for the commission of offences punishable under Sections 21, 25 and 29 of the said Act. The said charges were read over and explained to all the accused in simple Hindi/English, to which they pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 9 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.P-16 is assigned.

Submissions of learned counsel for the convict

5. The learned counsel for the appellant has made a vigorous address before this Court that, though the FSL concerned, made examinations upon the stuff inside the sample cloth parcels, as became sent to it for examination,

besides made an opinion that the stuff examined containing the prohibited narcotic drug/narcotic substance. Furthermore, he also submits that though, the examined stuff became re-enclosed in the cloth parcels, and, thereons the seal impressions of the FSL became embossed. However, apart from the report of the FSL concerned, the prosecution has not tendered into evidence the sample cloth parcels, nor obviously the examined sample cloth parcel became either produced or adduced into evidence. He submits that the above production was necessary, as in the absence of their production, in Court, the charge against the convict would not become cogently established. Moreover, he further submits that the production, in Court, of the sample parcels after an opinion being made thereon, by the FSL concerned, is but imperative especially when they cannot be either retained, at the FSL concerned, nor if they are returned, to the police *Malkhana* concerned, they cannot also be retained there, but are to be ensured to be produced before the learned trial Court. He submits that the production in Court of the examined stuff as inside cloth parcels, is primary evidence for not only supporting the report of the FSL concerned, but also for supporting the charge.

Submissions of learned State counsel

6. The learned State counsel has however submitted while placing reliance upon Section 52-A of the Act, and, also while placing reliance, upon a notification issued by the Ministry of Finance, Department of Revenue, as drawn on 16.01.2015, (i) that the certified inventory in respect of the seizure as made by the empowered Magistrate was rather alone required to be produced, in Court, besides it was sufficient to clinch the charge, as sub-Section 4 of Section 52-A of the Act, provisions whereof stands extracted hereinafter, declares the certified inventory to be primary evidence in respect of an offence under the Act.

[52A. Disposal of seized narcotic drugs and psychotropic substances.]—*[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]*

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or*
- (b) taking, in the presence of such magistrate, photographs of 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.]

7. He further refers to the notification drawn on 16.01.2015, whereby in terms of the substantive provisions of Section 52-A of the Act, the Drug Disposal Committee has been constituted, and, which has made an order of destruction of the examined cloth parcels. Resultantly, he submits that when the examined sample cloth parcels, as became sent to the FSL concerned, rather became validly destroyed. Therefore, he contends that the production, in Court, of even the examined sample cloth parcels was not required, besides also he submits that the certified inventory Ex.P-13, does constitute primary evidence for proving the charge. Relevant paragraphs of the notification (supra), are extracted hereinafter.

“MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 16th January, 2015

G.S.R. 38(E) - *In exercise of the powers conferred by section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, (61 of 1985), hereinafter referred to as the said Act, and in supersession of notification number G.S.R. 339(E), dated 10th May, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, and constraints of proper storage space, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, hereby specifies the narcotic*

drugs, psychotropic substances, controlled substances and conveyances which shall, as soon as may be after their seizure, be disposed of, the officers who shall dispose them of and the manner of their disposal.

2. Items to be disposed of. - *All narcotic drugs, psychotropic substances, controlled substances and conveyances shall be disposed of under section 52A of the said Act.*

3. Officers who shall initiate action for disposal. - *Any officer in-charge of a police station or any officer empowered under section 53 of the said Act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances under section 52A of that Act.*

4. Manner of disposal - *(1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the said Act or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.*

(2) After the Magistrate allows the application under sub-section (3) of section 52A of the said Act, the officer mentioned in subparagraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer-in-charge of the godown.

5. Drug Disposal Committee.-*The Head of the Department of each Central and State drug law enforcement agency shall constitute one or more Drug Disposal Committees comprising three Members each*

which shall be headed by an officer not below the rank of Superintendent of Police, Joint Commissioner of Customs and Central Excise, Joint Director of Directorate of Revenue intelligence or officers of equivalent rank and every such Committee shall be directly responsible to the Head of the Department.

6. Functions. - The functions of the Drug Disposal Committee shall be to-

- (a) meet as frequently as possible and necessary;
- (b) conduct a detailed review of seized items pending disposal;
- (c) order disposal of seized items; and
- (d) advise the respective investigation officers or supervisory officers on the steps to be initiated for expeditious disposal.

7. Procedure to be followed by the Drug Disposal Committee with regard to disposal of seized items. (1) The officer-in-charge of godown shall prepare a list of all the seized items that have been certified under section 52A of the said Act and submit it to the Chairman of the concerned Drug Disposal Committee.

(2) After examining the list referred to in sub-paragraph (1) and satisfying that the requirements of section 52A of the said Act have been fully complied with, the members of the concerned Drug Disposal Committee shall endorse necessary certificates to this effect and thereafter that Committee shall physically examine and verify the weight and other details of each of the seized items with reference to the seizure report, report of chemical analysis and any other documents, and record its findings in each case.

8. Power of Drug Disposal Committee for disposal of seized items.-The Drug Disposal Committee can order disposal of seized items up to the quantity or value indicated in the Table below, namely:-

1	2	3
Sl. No.	Name of item	Quantity per consignment
1	Heroin	5 Kg

1	2	3
2	Hashish (Charas)	100 Kg
3	Hashish oil	20 Kg
4	Ganja	1000 Kg
5	Cocaine	2 Kg
6	Mandrax	3000 Kg
7	Poppy straw	Upto 10 MT
8	Other narcotic drugs, psychotropic substances, controlled substances or conveyances	Up to the value of Rs. 20 lakh:

Provided that if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drug Disposal Committee shall send its recommendations to the Head of the Department who shall order their disposal by a high level Drug Disposal Committee specially constituted for this purpose.

9. Mode of disposal of drugs.-(1) *Opium, morphine, codeine and thebaine shall be disposed of by transferring to the Government Opium and Alkaloid Works under the Chief Controller of Factories.*

(2) *In case of narcotic drugs and psychotropic substances other than those mentioned in sub-paragraph (1), the Chief Controller of Factories shall be intimated by the fastest means of communication available, the details of the seized items that are ready for disposal.*

(3) *The Chief Controller of Factories shall indicate within fifteen days of the date of receipt of the communication referred to in sub-paragraph (2), the quantities of narcotic drugs and psychotropic substances, if any, that are required by him to supply as samples under rule 67B of the Narcotic Drugs and Psychotropic Substances Rules, 1985.*

(4) *Such quantities of narcotic drugs and psychotropic substances, if any, as required by the Chief Controller of Factories under sub-paragraph (3) shall be transferred to him and the remaining quantities of narcotic drugs and psychotropic substances shall be disposed of in accordance with the provisions of sub-paragraphs (5), (6) and (7).*

(5) *Narcotic drugs, psychotropic substances and controlled*

substances having legitimate medical or industrial use, and conveyances shall be disposed of in the following manner.

(a) narcotic drugs, psychotropic substances and controlled substances which are in the form of formulations and labeled in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) and rules made thereunder may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, after confirming the composition and formulation from the licensed manufacturer mentioned in the label, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder, provided that a minimum of 60% of the shelf life of the seized formulation remains at the time of such sale;

(b) narcotic drugs, psychotropic substance and controlled substances seized in the form of formulations and without proper labeling shall be destroyed;

(c) narcotic drugs, psychotropic substances and controlled substances seized in bulk form may be sold by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), and the rules and orders made thereunder, after confirming the standards and fitness of the seized substances for medical purposes from the appropriate authority under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the rules made thereunder,

(d) controlled substances having legitimate industrial use may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder.

- (e) seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee.*
- (6) Narcotic drugs, psychotropic substances and controlled substances which have no legitimate medical or industrial use or such quantity of seized items which is not found fit for such use or could not be sold shall be destroyed.*
- (7) Destruction referred to in sub-paragraph (b) shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards and such incineration may only be done in places approved by the State Pollution Control Board or where adequate facilities and security arrangements exist and in the latter case, in order to ensure that such incineration may not be a health hazard or polluting, consent of the State Pollution Control Board or Pollution Control Committee, as the case may be, shall be obtained, and the destruction shall be carried out in the presence of the Members of the Drug Disposal Committee.*

10. Intimation to Head of Department on destruction.-*The Drug Disposal Committee shall intimate the Head of the Department regarding the programme of destruction at least fifteen days in advance so that, in case he deems fit, he may either himself conduct surprise checks or depute an officer for conducting such surprise checks and after every destruction operation, the Drug Disposal Committee shall submit to the Head of the Department a report giving details of destruction.*

11. Certificate of destruction.-*A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, gross and net weight of the items seized, etc., shall be prepared and signed by the Chairman and Members of the Drug Disposal Committee as per format at Annexure 3 and the original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy shall be kept by the Drug Disposal Committee.*

12. Details of sale to be entered in godown register. *As and when*

the seized narcotic drug, psychotropic substance, controlled substance or conveyance is sold by way of tender or auction or in any other manner determined by the Drug Disposal Committee, appropriate entry indicating details of such sale shall be made in the godown register.

13. Communication to Narcotics Control Bureau.-Details of disposal of narcotic drugs, psychotropic substances, controlled substances and conveyances shall be reported to the Narcotics Control Bureau in the Monthly Master Reports.”

Inventory

8. The inventory drawn in pursuance to the provisions of Section 52-A of the Act, is comprised in Ex.P-13, its contents are reproduced hereinafter. The said inventory is submitted by the learned State counsel to be tendered into evidence. He further submits that on its tendering into evidence, it clinches the charge, given it being primary evidence in respect thereof.

“xxx

FIR No.25 dated 23.03.2016, under Section 21/61/85 of NDPS Act,m Police Station, Sadar Rajpura, Distt. Patiala.

Inventory Report U/s 52-A NDPS Act

Sir,

It is submitted that dated 23.3.16, I SI/SHO along with police party in search of bad elements were present in the area of village Uppalheri opposite Jashan Dhaba then one Swift Dezire car bearing No.DL1YD2388 and from above said car one kg heroin was recovered. Report is as under:-

- 1. Type of case property: Heroin*
- 2. Quantity of case property: One KG Heroin powder*
- 3. Identification of case property: from India*
- 4. Sample seal: HS*
- 5. Method of packing: Heroin recovered weighed 1 kg in the white cloth and with the seal bearing*

impression HS, one Black Grey colour bag on which Adidas was written.

1) U/s 52 NDPS above said case property one Kg parcels box plastic weighing one kg and one parcel box plastic weighing one Kg, duly sealed with seal impressions HS aforesaid case property is ordered to be disposed off after sealing.

Sd/- Harbinder Singh

P.S. Sadar Rajpura

Dated 24.3.16”

Analysis of the certified inventory

9. A reading of the above drawn inventory with respect to the seizure of Heroin carrying a weight of 1 Kg discloses that, after the extraction of two representative sample parcels from the bulk, seals bearing “HS” becoming embossed. Subsequently, as mandated by the provisions (supra), the learned JSC, Patiala on 16.09.2019 made an order Ex.P-14, thus certifying the correctness of the inventory drawn by the SHO of the police station concerned, and, to which Ex.P-14 is assigned.

10. The sample cloth parcels carrying thereons the above seal impressions became sent on 29.03.2016 through HC Darshan Lal 1201/Patiala. The Chemical Analyst concerned, working at the FSL concerned, on receiving the above cloth parcels, hence he not only ensured that the seals carried thereons were intact besides also ensured that the numbers of seals, and, also the English alphabets as recited in Ex.P-13, rather through making tallyings with Ex.P-13, whereafter he proceeded to make an analysis thereon. Ultimately, an affirmative opinion was made with respect of the stuff carried therein. Moreover, after makings of examination(s) of the stuff inside the sample cloth parcels, the Chemical Analyst did not re-enclose the examined stuff inside the cloth parcels concerned, nor embossed the seals of the FSL concerned, on the said parcel.

“FORENSIC SCIENCE LABORATORY PUNJAB SAS NAGAR

(Admissible U/s 293 Cr.P.C. as amended in 1978)

1. Report No.: 663/2016/Toxi/FSL/Pb, dated 7.6.16

2. Forwarding Authority: The Senior Superintendent of Police, Patiala.

Reference No.: Unique code No.0048 Dpo/Ptl dated 28.03.2016.

On opening the parcel sealed with one seal of RS, it was found to contain one another parcel bearing secret code no.004/2016 sealed with one seal of HS. On opening the parcel bearing secret code no.006/2016 it was found to contain:

3. Case Reference: FIR No.25 dated 23.03.2016 U/S 21/61/85 ND & PS Act.

4. Date of Receipt: 29.03.2016

5. Mode of Receipt: One parcel sealed with one seal of 'AB' alleged to contain heroin.

Seal on the parcel was found intact and tallied with the specimen seal impression.

7. Quantity of sample: 10 grams of brown powder with lumps and white particles.

8. Purpose of reference: Analysis and Report.

9. Identification & Tests:

Diacetylmorphine: Found present in the content of the parcel.

Quantity of diacetylmorphine: 26.49%

REPORT

The content of parcel under reference has been analyzed by chemical analysis. On the basis of analysis 36.49% diacetylmorphine (heroin) has been found present in content of parcel.

Sd/- Rajni Rohilla

(Rajni Rohilla)

Scientific Officer

Regional Testing FSL

LUDHIANA”

11. As above stated, the above examined sample cloth parcels were never returned to the Court nor were produced, as, primary evidence to sustain

the charge, rather as stated (supra), they appear to become destroyed at the FSL concerned.

12. In the wake of the above, the following questions arise for determination:

- a) Whether the destruction of the examined sample cloth parcels was made within the ambit of the provisions of Section 52-A of the Act, besides was in pursuance to the notification (supra) as made through an empowerment vested under the provisions contained in Section 52-A of the Act?
- b) Whether there was an imperative necessity for the production in Court of the examined sample cloth parcels, hence for sustaining the charge drawn against the convict.
- c) Whether even without the production of the examined sample cloth parcels, in Court, the report of the FSL concerned, when is supported by a certified inventory Ex.P-13, thus drawn within the ambit of sub-Section 4 of Section 52-A of the Act, rather becomes the apt primary evidence, to sustain the charge drawn against the convict, besides renders redundant the production of the examined sample cloth parcels, in Court. Importantly given Ex.P-13, comprising the statutorily mandated primary evidence.

Analysis of statutory provisions

13. A deep reading of Section 52-A of the Act makes emergences, that the relevant parameters rather to be prevailing upon the statutorily constituted Drug Disposal Committee, for the latter ably ordering for the disposal of seizure, hence becoming comprised in:

- a) the hazardous nature, vulnerability to theft, substitution thereof;
- b) constraint of proper storage space or any other relevant consideration;

14. However, no destruction could be caused of the bulk as remained with the in-charge of the Malkhana of the police station concerned, as in terms of notification (supra), only heroin being 5 kg was required to be destroyed, but heroin weighing less than 5 kg which is the quantum of heroin in the instant case was not required to be destroyed, as such, it was incumbent, upon the investigating officer concerned, to, even if at the FSL concerned, the stuff examined, became destroyed by the Chemical Examiner concerned, rather from the bulk prepare sample parcels for an opinion thereons being made by the Chemical Analyst concerned. However, the said has not been done thereby omission (supra), makes inroads into the efficacy of the prosecution case.

15. Moreover, sub-Section 2 of Section 52-A of the Act assigns leverage to the authorized officer concerned, to prepare an inventory in respect of the seizure, as, relating to all description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars thereof, and/or, the packing in which they are packed, country of region, and, other particulars, as the officer may consider relevant to identify the seizure.

16. However, the above drawn inventory by the empowered officer, makes it incumbent upon him, to yet move an application before the jurisdictionally empowered Magistrate for the purposes of:

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

b) taking, in the presence of such magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

17. Only when the above statutorily mandated certification, is made hence by the jurisdictionally empowered Magistrate, on the inventory prepared by the authorized police officer, then only the inventory derives the relevant statutory leverage. In addition, though sub-Section 4 of Section 52-A of the Act, assigns to the certified inventory the high pedestal of its constituting primary evidence in respect of the offences under the Act. Moreover, the above assigning of a high pedestal of primary evidence, to a valid certified inventory drawn under Section 52-A of the Act, is not only in respect of the inventory but is also in respect of the photographs, controlled substance or conveyances, besides is in respect of any list of representative samples drawn under sub-Section 2 of Section 52-A of the Act.

Inferences from the above provisions, and, answers to the above formulated questions of law

18. Be that as it may, the preparation of a certified inventory, and, to which the pedestal of primary evidence is assigned in respect of an offence under the Act, does not however yet assign any empowerment, in the Drug Disposal Committee constituted under the notification (supra), to yet destroy, even the examined sample cloth parcels, nor even in the face of destruction of the apposite bulk, as made under the orders of a statutorily constituted Drug Disposal Committee, can yet exempt the prosecution from ensuring the

production of the examined sample cloth parcels before the learned trial Judge concerned. The reason for making the above conclusion becomes rested upon the factum, that clause (c) of sub-Section 2 of Section 52 of the Act, assigns jurisdiction in the Magistrate to allow the authorized officer, to draw representative samples of such drugs or substances, but in his presence. Subsequently not only the inventory, but also the list as drawn in respect of the derivations of representative samples from the bulk of such drugs, or substances, is also required to be certified by him, to be correctly drawn.

19. If so, even if in sub-Section 4 of Section 52-A of the Act, there is a speaking that any certified list of samples, as drawn under clause (c) of sub-Section 2 of Section 52-A of the Act, hence becomes primary evidence in respect of such offence. However, yet it cannot be concluded, that either *per-se* the list, besides also *per se* the report of the Chemical Analyst concerned, rather comprising the apt primary evidence to clinch the charge, especially without the examined sample cloth parcel concerned becoming produced in Court. The reason for drawing the above inference becomes rested in the factum, that the list of representative samples, though is declared by sub-Section 4 of Section 52-A of the Act, to constitute primary evidence in respect of the disclosures occurring therein. However, the above is only for the Chemical Analyst concerned, who receives them at the laboratory concerned, thus becoming enabled to make the apposite matchings in respect of the numbers of seal impressions, the English alphabets carried thereon besides his becoming also enabled to ensure the intactness of the seals, as made on the sample cloth parcels, rather through his referring to the descriptions as are carried in the apposite road certificate. Necessarily the above assigning of a pedestal of primary evidence, to the certified list drawn in respect of representative samples, is but only to the above

limited effect. Any opinion to the contrary would result in the prosecution being entitled to prove the charge not through production in Court of the examined sample cloth parcels but through its tendering in Court, only the report of the Chemical Analyst concerned, as made upon the stuff inside the sample cloth parcels, and, that too, only because the certified list drawn in respect of the sample cloth parcels *ipso facto* speaking about yet the laboratory untested stuff enclosed inside the representative cloth samples, containing traces of the prohibited psychotropic substance, and/or, of the narcotic drug. If *per se* the tendering of the certified inventory before the learned trial Judge concerned, along with the report of the FSL concerned, is construed to be primary evidence in respect of a charge under the Act, it would bring the hereafter ill-consequence(s).

I. *Qua* even without testing of the stuff inside the representative cloth parcels, the Courts of law being led to conclude that the relevant stuff rather containing traces of the prohibited substance or of the narcotic drug.

II. The Act despite not excluding the laboratory testings of the relevant stuff inside the representative cloth parcels, yet evidentiary vigor being assigned to the certified list. Therefore without the laboratory testings of the stuff inside the representative parcels, does not render, the certified list to *per-se* become primary evidence. If so without the apposite report of the Chemical Analyst concerned, the charge drawn against the accused in respect of an offence cannot be proved nor can the prosecution become exempted from also producing the examined cloth parcels before the learned trial Judge. Resultantly, the list *per-se* reiteratedly, is not primary evidence rather the opinion of the Chemical Analyst concerned, as, made in respect of the stuff inside the representative cloth parcel, as sent to it, becomes the primary evidence, but subject to the examined sample

cloth parcels also along with the report of the Chemical Analyst becoming produced in Court.

III. Thus without the apposite laboratory testing being done at the stage of preparation of certified inventory. Resultantly, thereby the provisions of Section 45 of Indian Evidence Act, besides of Section 293 of Cr.P.C., rather remaining intact. The effect of the above is that, the expert evidence has to be proven through production in Court of the examined sample parcels. Moreover, since a rebuttable presumption of truth is assigned to the report of the Chemical Analyst concerned, by the provisions of Section 293 of Cr.P.C. Thus the accused is to be given an opportunity to rebut the presumption of truth.

20. Emphasizingly in the above situation the productions (supra), before the learned trial Judge, becomes the primary evidence to support the charge under the Act. The reason being that, excepting the laboratory testings of the stuff inside the cloth parcel, at the FSL concerned, which but is the relevant trite scientific evidence to prove the charge drawn against the accused in respect of NDPS offences, rather there is no other best scientific evidence to prove it. Therefore, only if at the phase of the drawings of the certified inventory by the learned Magistrate, that the stuff inside the representative cloth parcels, becomes subjected to laboratory testings, that then only would the certified inventory gather evidentiary vigor. Therefore also, the certified list *per se* does not obviously become primary evidence nor exempts from production, in Court, of the report of the FSL concerned, nor also exempts the production in Court, of the examined sample cloth parcels. Consequently, the assigning of the pedestal of primary evidence, to the certified list drawn in respect of the representative samples, is but at the above phase, unless then the apposite laboratory testings are done, rather limited to the authenticity of the makings of seals thereon,

besides for ensuring the intactness of the seals' made thereons, at the time of the drawings of representative parcels in the presence of the Magistrate, besides also only for excluding the possibility of tamperings being done with the representative cloth parcels, upon their travelling to the Chemical Analyst concerned. However, the above assigning of the high pedestal of primary evidence, to the certified list reiteratedly, as above stated rather can ever exempt the production of the examined sample cloth parcels in Court. The reason as stated (supra), is but simple that at the stage of drawings of the representative cloth parcels by the Magistrate from the bulk, and, which leads him to make the statutory certificate, rather there is no laboratory testings done of the stuff inside the representative parcels. If the above testing is done at the above phase, then only the statutory certificate would become the primary evidence, to sustain the charge under the Act, otherwise not. However in the instant case at the time of drawings of the representative parcels before the learned Magistrate concerned, rather there was no laboratory testings done of the stuff inside the representative parcels, thus, there arose a necessity for the production in Court of the examined cloth parcels hence along with the report of the FSL. The reason being that both provisions of Section 45 of Indian Evidence Act, besides the provisions of Section 293 of Cr.P.C., then remained intact. The further consequence thereof, is that, the Expert's report made on the examined cloth parcels is to be proven through the production in Court of the said parcels. Moreover an opportunity to the accused to rebut the presumption of truth, attached to the Chemical Analyst concerned, is also to be granted to him.

Further reasons for drawing the above inferences

21. Even otherwise, if the report of the Chemical Analyst concerned, is rendered insignificant, which it would become, in case without any laboratory

examination(s) being made of the stuff inside the sample cloth parcels, yet the certified list of inventory becoming primary evidence, whereupon rather all the laboratories concerned, would become dysfunctional. Moreover, thus the certified list of representative parcels, even without laboratory examinations being made of the stuff inside them, conspicuously, at the time of their preparation before the Magistrate, would yet become unbefittingly construable to be containing traces of the banned psychotropic substances or the banned narcotic drug. The above situation is not contemplated by the statute. Therefore, even if sub-Section 4 of Section 52-A of the Act, opens with a *non obstante* clause, hence ousting the provisions of Section 293 of Cr.P.C., besides ousts the provisions of Section 45 of Indian Evidence Act. Moreover, even though the above ouster is valid, besides is workable, but is subject to at the time of drawings before the Magistrate of the list appertaining to the derivations of representative parcels from the bulk, that yet necessarily then the apposite laboratory testings being done by/in the presence of the Magistrate. The apposite laboratory testings at the above phase can be done either through the Magistrate concerned, forthwith travelling with the representative parcels to the laboratory concerned, or his deputing a responsible officer of the Court to carry the representative samples to the laboratory concerned. Only if the above laboratory testing is done, and, that too at the time of derivations of representative samples from the bulk, but obviously before the Magistrate, that then only the above *non obstante* clause (supra), occurring in sub-Section 4 of Section 52-A of the Act would become enlivened, or would not become redundant, otherwise not.

22. However, in the instant case there is no evidence suggestive, that at the time of drawings of representative samples, from the bulk hence in the presence of the learned Magistrate concerned, his ensuring that the said

representative parcels, became tested at a laboratory adjoining the Court premises. Therefore, when only in the above event of the relevant apposite laboratory testings being done, that the mandate of sub-Section 4 of Section 52-A of the Act would have the fullest play, otherwise not. However, if without the apposite laboratory testings being done, more particularly at the stage of preparation of certified inventories or the preparation of the certified list of representative parcels, rather than, the mere preparation of certified inventories or of certified list of representative parcels, cannot be construed to be *per se* resulting in a conclusion, that the unexamined stuff inside the representative parcels contained traces of banned psychotropic substance, and, of banned narcotic drug. In sequel, there was an imperative necessity for the production of the examined sample cloth parcels in Court along with the report of the FSL. Therefore, in the instant case in wake of the above discussion, the mere production in Court of the certified inventory or the mere production of the report of the FSL concerned, is rather *per se* not sufficient to clinch the charge drawn against the accused.

The effects of purposive interpretation to the mandate of sub-Section 4 of Section 52-A of the Act

23. The effect of the above purposive interpretation being made to the mandate of sub-Section 4 of Section 52-A of the Act, is that, it is also required to be given the fullest effect, as only on its being given the fullest effect, hence the legislative intent of its incorporation in Section 52-A of the Act, would become fully achieved. As above stated it opens with a *non obstante* clause, and, excludes the operation(s) of Section 45 of Indian Evidence Act, besides excludes the operation of Section 293 of Cr.P.C. Section 45 of Indian Evidence Act relates to expert evidence being collected, and, also the expert evidence being tendered besides proven before Courts of law. Moreover, Section 293 of Cr.P.C., relates to

the reports made at the FSL concerned, and, to which a rebuttable presumption of truth is assigned. The *non obstante* clause in sub-Section 4 of Section 52-A of the Act would yet remain enliven, but only when lab testing facilities are resorted to by the learned Magistrates concerned, pointedly at the phase of their deriving representative samples from the bulk besides when they thereafter make an order certifying the correctness thereof. In case the learned Magistrates concerned, at the time of certifying the correctness of the apposite inventory, and, to which the high pedestal of primary evidence is statutorily assigned, proceed to also then personally forthwith travel along with the representative samples, to the laboratory concerned, for the relevant testings being made there, or depute a responsible gazetted officer for the above purpose, then the assigning of the high pedestal of primary evidence to the statutory inventory, would never become rendered redundant rather would remain ever enlivened. Moreover, the above is also subject to the laboratory testings of the stuff inside the representative parcels, also may be, if deemed fit becoming mentioned in the certified inventory, or in some other document appended therewith. If at the initial phase of the learned Magistrate concerned, certifying the correctness of the statutorily made inventory, the above mentionings are made, in the certified list or through his appending with the certified inventory the report of the FSL concerned. Consequently, if the above is then done, thus the certified inventory would enjoy the completest sanctity. Moreover, it would also result in the legislative intent hence excluding the provisions of Section 45 of Indian Evidence Act, besides excluding the provisions of Section 293 of Cr.P.C., rather becoming completely enlivened. Moreover then there would be no necessity, for thereafters qua apposite lab testings being done nor would there be any necessity of the examined sample cloth parcels along with the report of the FSL being produced in Court, as primary evidence, to sustain the charge, otherwise not.

24. Since in the instant case at the time of his certifying the correctness of the entries made in the apposite inventory, the learned Magistrate concerned, did not then ensure the apposite laboratory testing being done nor mentioned them then in his certified inventory nor ensured the appendings therewith of the apposite opinion of the FSL concerned. Thus, *per se* the certified inventory does not become primary evidence. Consequently, there was a dire necessity on the part of the prosecution to produce, in Court, both the examined cloth samples, and, also the report of the FSL. However, the above has not been done.

25. In consequence, the argument of the learned State counsel that *per se* the certified list of the representative parcels, is primary evidence becomes rejected, and, accordingly an answer is meted to the corresponding above formulated question of law.

26. Since as above stated this Court, has only for reasons (*supra*), concluded that, hence the deficit certified list of representative sample, is not, primary evidence to prove the charge. Therefore, the prosecution is not exempted from proving the report of the FSL concerned, nor is exempted from producing, in Court, rather along with the report of the FSL concerned, the apposite examined sample cloth parcels. Emphasizingly, the above necessity has arisen only because at the time of presentation of the inventory before the learned Magistrate concerned, by the empowered police officer, rather his omitting to, before his certifying the correctness of the inventory, or immediately thereafter hence ensuring that then, the apposite lab testings being done. The above may have been ensured through his either personally forthwith ensuring apposite laboratory testings, or through his deputing some responsible gazetted officer to, along with the empowered police officer, travel to the lab concerned, for the relevant testings being made of the stuff inside the representative parcels.

Subsequently, if he had in the inventory certified by him, hence referred to the stuff inside the representative parcels hence being put to laboratory testing or had appended with the certified inventory the report of the FSL concerned. Resultantly, then the *non obstante* clause excluding the mandate of Section 45 of Indian Evidence Act, besides the mandate of Section 293 of the Cr.P.C., would become fully enabled and alive, besides would give the fullest effect to the legislative wisdom, in its being engrafted in Section 52-A of the Act. However, in the instant factual situation, for all the above reasons yet the provisions of Section 45 of Indian Evidence Act, besides the provisions of Section 293 of Cr.P.C., remain fully intact.

Summarization of principles

27. (I) The laboratory testings of the stuff inside the representative parcels referred in the certified inventory drawn under Section 52-A of the Act, is but imperative, as, only on laboratory testings being done of the stuff inside the representative parcels, that then it can be concluded that the charge drawn with respect to an offence under the Act is proven.

(II) The mere production of the certified inventory in Court, may not become primary evidence, but would become so only when at the time of drawings of the representative parcels before the learned Magistrate concerned, the apposite laboratory testings are then done, either through the learned Magistrate personally travelling along with the representative parcels, to the laboratory or his deputing a gazetted officer along with an empowered police officer to travel to the laboratory for the relevant testings being made there.

(III) If the above testings are also referred in the certified inventory or the report of the FSL is appended therewith or a reference to the report of the FSL is made in any document appended with the certified inventory, then the mere production of the certified inventory in Court, becomes primary evidence, and, *per se* on its production in Court, the charge under the Act becomes proven.

(IV) However, if at the time of drawings of the representative parcels or if at the time of makings of the statutory certification qua correctness of the inventory, the Magistrate concerned, does not ensure the apposite laboratory testings being done, then the laboratory testings of the stuff inside the representative cloth parcels, is yet to be done at the laboratory concerned. If so, not only the report of the FSL concerned, but also the examined relevant cloth parcels are to be produced in Court, as both comprise primary evidence, for proving a charge under the Act. Importantly, when in the above relevant factual situation, the provisions of both Section 45 of Indian Evidence Act, and, of Section 293 of Cr.P.C., remain intact.

28. The Registry is directed to circulate a copy of this verdict to the Secretary Home, Government of Punjab, and, to the Secretary Home, Government of Haryana. The reason being that storage capacities in the police *Malkhanas* concerned, in the above States being ensured to be increased within six months hereafter, and, with an intimation to this Court.

29. In consequence, there is merit in the instant appeal, and, the same is allowed. The impugned verdict, as, drawn, upon qua the convict, by the learned

Additional Sessions Judge concerned, is quashed, and, set aside, and, the appellant is acquitted of the charge drawn against him. The personal, and, surety bonds of the convict are directed to be forthwith cancelled, and, discharged. The convict if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to him, but in accordance with law. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

(SURESHWAR THAKUR)
JUDGE

6.03.2024
Ithlesh

(LALIT BATRA)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No