

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.983 of 2023**

Arising Out of PS. Case No.-219 Year-2020 Thana- TARAIYA District- Saran

Dhiranjan Singh @ Dhiranjan Kumar Singh, Son of Sakaldeep Singh, R/o  
Laguni, P.S. - Panapur, Distt. - Saran at Chapra, Bihar

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

**CRIMINAL APPEAL (DB) No. 617 of 2023**

Arising Out of PS. Case No.-219 Year-2020 Thana- TARAIYA District- Saran

Hira Ram, Son of Bharat Ram, Resident of Village- Patti Pachraud, P.S.-  
Taraiya, Distt- Saran, Chapra

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

(In CRIMINAL APPEAL (DB) No. 983 of 2023)

For the Appellant/s : Mr. Satyendra Narayan Singh, Advocate  
Mr. Kundan Kumar Sinha, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 617 of 2023)

For the Appellant/s : Mr. Satyendra Narayan Singh, Advocate  
Mr. Kundan Kumar Sinha, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**

**HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 10-07-2025**

Heard learned counsel for the appellants and learned  
Additional Public Prosecutor for the State as also perused the trial  
Court's records.

2. These appeals are arising out of the judgment of  
conviction dated 12.05.2023 (hereinafter referred to as the



‘impugned judgment’) passed by learned Additional Sessions Judge-I, Saran at Chapra (hereinafter referred to as the ‘learned trial Court’) in NDPS Case No. 06 of 2020 (Taraiya P.S. Case No. 219 of 2020) and the order of sentence dated 17.05.2023 (hereinafter referred to as the ‘impugned order’) by which the learned trial Court has been pleased to convict the appellants for the offences punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short ‘NDPS Act’) and sentenced them to undergo rigorous imprisonment for 15 years and to pay a fine of Rs. 1 lakh each. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for two years.

### **Prosecution Case**

3. The prosecution case is based on the self statement of S.I. Rajesh Kumar (PW 4) recorded by self dated 03.07.2020 at 2.45 A.M. on the road of Majhopur- Taraiya Nahar road at near Mahi Nadi Nanda, village-Pachraud, Police Station-Taraiya, District-Saran. In his self statement (Ext. P-3 and P-4) he has alleged as under:-

“On 02.05.2020 at 10:30 P.M. when he along with his associated reached village ‘Pachraud’ near river Mahi in course of patrolling, they saw two motorcycles coming towards them. When the police force gave them signal to stop their



motorcycles, they tried to escape leaving their motorcycles. They chased them and apprehended, the accused disclosed their names as Hira Ram and Dhiranjan Singh. Hira Ram got injured when he was trying to escape. From both the motorcycles, five sacks were recovered out of which two were recovered from the motorcycle Dhiranjan Singh and the rest three were recovered from the motorcycle of Hira Ram. The accused persons disclosed that they were carrying '*ganja*' but they could not produce any relevant document for transportation of '*ganja*'. He has further alleged that 81.8 kg of '*ganja*' and one old mobile phone were recovered from the motorcycle of Hira Ram and 61.5 kg of '*ganja*' and one Jio mobile phone were recovered from the motorcycle of Dhiranjan Singh."

4. On the basis of the said self statement of PW 4, Taraiya P.S. Case No. 219 of 2020 was registered on 03.07.2020 under Section 20(b)(ii) (C) of the NDPS Act.

5. Upon investigation, police submitted a charge sheet bearing no. 177 of 2020 on 29.09.2020 for the offences under Sections 8, 20(b)(ii)(c), 25 & 29 of the NDPS Act. The learned Special Judge took cognizance of the offences vide order dated 01.10.2020. Charges were explained to the accused persons, namely, A1 and A2 who denied the charges and claimed to be tried. Charges under Section 20(b)(ii) (c) of the NDPS Act were



framed.

6. The prosecution produced five witnesses and several documentary evidences to prove the charges. Material exhibits being MO 1 to MO 28 were also produced.

7. The statements of A1 and A2 were recorded under Section 313 Cr.P.C. They denied the prosecution evidences and pleaded innocence. The defence produced two witnesses, namely, Ganesh Kumar Rai, DW 1 and Raja Kumar, DW 2. These two defence witnesses are the witnesses of the seizure list however, it appears from the charge sheet that they were not made charge sheet witnesses by the I.O.

8. In course of trial, the prosecution examined as many as five witnesses and exhibited certain documentary evidences to prove the prosecution case. The list of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

**List of Prosecution Witnesses**

|       |                 |
|-------|-----------------|
| PW 1  | Rishimuni Rai   |
| PW 2  | Arun Ravidas    |
| PW. 3 | Sumant Jee Bari |
| PW 4  | Rajesh Kumar    |
| PW 5  | Jamun Prasad    |

**List of Exhibits**

|                    |                               |
|--------------------|-------------------------------|
| Exhibit ‘P-1’/PW4  | Seizure list dated 03.07.2020 |
| Exhibit ‘P-2’/PW 4 | Seizure list dated 03.07.2020 |



|                                                               |                                              |
|---------------------------------------------------------------|----------------------------------------------|
| Exhibit ‘P-3’/PW 4                                            | Self statement of PW4                        |
| Exhibit ‘P-4’/PW4                                             | Endorsement made by PW 4                     |
| Exhibit ‘P-5’/PW 4                                            | Formal F.I.R.                                |
| Exhibit ‘P-6’/PW 5                                            | Petition given by PW 5                       |
| Exhibits ‘P-7’/PW 5, ‘P-8’/ PW 5, ‘P-9’/ PW 5 and ‘P-10’/PW 5 | Still photographs of samples of seized ganja |
| Exhibit ‘P-11’/PW 5                                           | Formal charge sheet                          |
| Exhibit ‘P-12’                                                | FSL report                                   |

9. The defence examined two witnesses which are as under:-

|      |              |
|------|--------------|
| DW 1 | Ganesh Kumar |
| DW 2 | Raja Kumar   |

10. It appears that the statement of the accused-appellants was recorded under section 313 CrPC. The accused took a plea that they are innocent and have been falsely implicated in this case.

**Findings of the Learned Trial Court**

11. The learned trial Court having analyzed the evidences available on the record held that the prosecution searched and seized ‘ganja’, made it’s sample for forensic examination after registration of the case against both the accused persons and the forensic examination of the seized samples found that those were ‘ganja’ containing Tetra Hydro



Cannabinol (THC) which is the chief psychoactive ingredient of '*ganja*'. Thus, the seized article was '*ganja*' within the meaning of Section 2 (iii) (b) read with section 8 of the NDPS Act.

**12.** The learned trial Court has upon going through the evidence of the informant (PW-4) held that he has supported the prosecution case and has withstood the cross-examination. No major contradiction could be noted in his cross-examination. The trial Court found that PW-1 who had brought the weighing balance and PW-2 have supported the case of the prosecution by stating in their examination in chief that they were on patrolling duty along with the PW-4 in the night of 02.07.2021.

**13.** The learned trial Court held that the second vehicle on patrolling duty was also called on the spot and they came along with weighing balance for measurement of '*ganja*', total of 81.8 K.G. of '*ganja*' was recovered from three sacks which were carried by first motorcycle, a total of 61.5 K.G. of '*ganja*' was recovered from two sacks carried on second motorcycle. The seized articles are said to be sealed in presence of the villagers and copy of seizure list was served upon both the accused persons.



14. The learned trial Court held that the place of occurrence in this case is as has been stated in the First Information Report (FIR).

15. The learned trial Court held that out of five witnesses brought on record by the prosecution, PW-2 and PW-4 are the eye witnesses to the seizure of '*ganja*' from both the accused persons, as they caught them after chase but remaining two prosecution witnesses are hearsay to the extent of their arrest and seizure of '*ganja*'. However, they are eye witnesses of subsequent proceeding against them vide which seizure list was made. It has been held that Ext. P-1/PW 4 and Ext. P-2/PW 4 which are the two seizure lists dated 03.07.2020 made at 1:30 "O" clock corroborate the prosecution case. The learned trial Court held that both the defence witnesses are not worth relying upon.

16. In the light of the discussions made by the learned trial Court and the judgment of the Hon'ble Supreme Court and the High Court, discussed in the impugned judgment, it has been held that the '*ganja*' has been seized from the possession of the motorcycles and the prosecution has been able to prove the charges under Sections 20 (b) (ii) (c) of the NDPS Act against the Appellant nos. 1 & 2 beyond



all shadow of doubt.

**Submissions on behalf of the appellants**

17. Learned counsel for the appellants has assailed the impugned judgment of conviction and the order of sentence on various grounds. It is submitted that on close scrutiny of the oral and documentary evidences adduced on behalf of the prosecution, it would be found that the informant (PW 4) has stated that on seeing the police action, the passers-by stopped and some people came there on hearing the 'halla'. Out of them PW-4 took two (2) independent witnesses and in their presence opened the sacks kept on the motorcycle of Hira Ram. The second patrolling party came after 15 minutes and PW-4 got the weighing balance from the patrolling office whereafter he weighed the packets which were found from the sacks kept on the motorcycle of Hira Ram. He found that 16 packets were weighed 81.800 K.G. He put '*marka*' of P1 to P16 and sealed all the packets. Learned counsel submits that the two seizure list witnesses, who are said to be the independent witnesses were not made charge sheet witnesses in this case. PW 4 has not explained the reason for not making those independent witnesses, a charge sheet witness. He proved the signature of both the witnesses and at



his instance both the seizure lists i.e. P-1 and P-2 were marked exhibits.

**18.** Learned counsel for the appellants further points out that PW-4 came to the police station that the seized articles as per Ext. P-1 and P-2 and there he recorded his self-statement and registered the case. In paragraph '15' of examination in chief, he has stated that he had brought the seized material exhibit from Taraiya police station which are kept in four plastic sacks in sealed condition. He opened all the four sacks from which total 28 packets of '*ganja*' like substance were taken out and those were marked as MO 1 to MO 28. He has stated that he had brought the material exhibits from the '*malkhana*' of the police station.

**19.** Learned counsel submits that in his cross-examination, this witness has stated in paragraph '13' that the sealed exhibits which he had brought in the court were brought in the sacks which were of later period. He had sealed the packets kept inside the sacks. He has stated that total 5 sacks were seized from the two motorcycles but he had brought only four sacks in the court. In paragraph '29' of his cross-examination, he has stated that the sacks which were at the time of seizure were damaged by the rats, therefore, he had



brought the seized material exhibits in another four sacks. It is thus submitted that from the evidence of PW 4, it is evident that after seizure of the so-called '*ganja*', no inventory was prepared and no certification of the learned Magistrate was obtained. The seized '*ganja*' were kept in the '*malkhana*' of the police station from where the informant had brought them in the Court. During the period, the sacks were changed which would prove fatal to the prosecution case.

**20.** Learned counsel submits that according to PW 4, one Rishimuni Ram had brought the weighing balance. However, the said Rishimuni Ram (PW 1) has stated that weighing balance was brought by '*chowkidar*' from Pachraud market. The said '*chowkidar*' has not been named and he has not been made a charge sheet witness. In his cross-examination, P.W. 1 has stated that he was not in the raiding party and he was not aware when the accused persons were arrested. He has stated that the accused persons were kept in Pati Pachraud village which is a village of 100-150 houses. He could not say that whether any other person of the said village was there or not. He got the information about the occurrence from '*barababu*', Rajesh Kumar. He had not put his signature on the seizure list. It is thus submitted that from the evidence



of PW-1, the claim of PW-4 that it was PW-1 who had brought the weighing balance stands falsified. The fact that PW-1 has not put his signature on the seizure list and has stated that he was not a member of the raiding party would further show that no seizure had taken place in his presence.

**21.** Learned counsel further points out that Arun Ravidas (PW 2) has stated that in presence of the villagers, the sacks kept in the motorcycles were opened and in presence of the villagers, the officer in-charge had sealed the material exhibits and prepared the seizure list. However, in his cross-examination, this witness has stated that at the time when the 'ganja' was being seized, the villagers had not come and they were not present. Only after 15-20 minutes of the initiation of action 5-6 villagers were assembled. He could not say that who was riding which motorcycle. This witness has further stated that the weighing balance had been brought from police station. It is thus submitted that on the point of weighing of the material exhibits, the prosecution witnesses are highly inconsistent and their oral testimony would create doubt over the prosecution case that the seized exhibits were duly weighed and sealed in presence of independent witnesses.

**22.** Learned counsel further points out that Suman



Jee (PW 3) was also not a member of the raiding team of PW 4. He had reached there but before his reaching to the said place, the seizure had already taken place. This witness was questioned by the defence that if the seizure list witness was resident of village situated at a distance of 5-6 kilometers then how they came in the mid-night from there village and for what purpose they had come. This witness has stated that he did not get any knowledge in this regard.

**23.** It is further pointed out that Jamun Prasad (PW 5) is the investigating Officer of the case. He has stated that what action had taken during the investigation of the case. He has stated that he had gone to Chapra Court with the seized '*ganja*'/exhibits on 06.07.2020 for obtaining an order but he was told that because of COVID-19, the Court was getting sanitized so it was closed from 06.07.2020 to 08.07.2020. Thereafter, he went to the Court on 15.09.2020 at 10:35 with the seized exhibits for obtaining an order whereafter the learned District and Sessions Judge vide Memo No. 424 dated 15.09.2020 ordered Smt. Kiran Ojha, Judicial Magistrate, 1<sup>st</sup> Class, Chapra to pass an appropriate order. He has proved his application as Ext. P-6/PW5. He had brought seized '*ganja*' from '*Malkhana*' to Court and had prepared samples by



weighing from computer parts in 13-13 grams which he had sealed in presence of the court and had obtained signature of Smt. Kiran Ojha, JM, 1<sup>st</sup> Class and had also got the videography done. The photographs were marked as Ext. A to D. At the instance of PW 5 the signature on all the four photographs marked as P-7/PW5, P-8/PW5, P-9/PW5 and P-10/PW5. This witness has stated that on 29.09.2020, the sealed 'ganja' sample were taken out from the 'malkhana' of the police station and were sent to the forensic science laboratory, Gunipur, Muzaffarpur vide DR No. 1296/20 dated 20.09.2020. On the same date i.e. 29.09.2020, he had submitted a charge sheet while keeping the investigation pending for seized exhibits, motorcycles and the sample. It is thus submitted that in this case the charge sheet no. 177/2020 was submitted on 29.09.2020 even before reaching of the samples to the Forensic Science Laboratory. This witness has stated in his cross-examination that he was not in the raiding party and he had not recorded statement of the seizure list witnesses. He has also not recorded statement of any independent witness and during investigation, he had not received the FSL report.

**24.** The learned counsel submits that it is evident from the oral evidence of the prosecution witnesses that in this



case, the prosecution has not followed the standing order no. 1 of 1989 while drawing a sample from a particular lot. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bharat Aambale Vs. State of Chhattisgarh** reported in **2025 SCC Online SC 110** and a recent judgment of the Hon'ble Supreme Court in the case of **Surepally Srinivas Vs. The State of Andhra Pradesh (now State of Telangana) with Edigi Ramaiah and Others ETC. Vs. The State of Andhra Pradesh** reported in **2025 INSC 414** to submit that in the kind of violation of the standing order which has statutory force, the prosecution case is liable to fail and the appellants would deserve an acquittal.

**25.** On behalf of the defence, two witnesses were produced. Ganesh Kumar Rai (DW-1) is one of the witnesses on the seizure list (Exhibit 'P-1'). Surprisingly, he was not brought as a prosecution witness. He has deposed as a defence witness and has stated that his house is situated at a distance of eighteen kilometer west from Manjhopur Canal. He has further stated that no seizure had taken place in his presence. According to him, when he had gone to Taraiya Police Station, there Jamadar Sahab had obtained his signature on two blank sheets of paper. In his cross-examination, he denied the



suggestion that he was standing near Taraiya Manjhopur Canal and was watching that whether any article has been seized or not. He denied the suggestion that he had willingly put his signature on the seizure list, which has been identified by the informant Rajesh Kumar and the seizure list has been marked Exhibit 'P-1'. He did not identify the accused Heera Ram and Dhirendra Singh.

**26.** Raja Kumar (DW-2) is another witness on the seizure list (Exhibit 'P-1' - Exhibit 'P-2'). He has also deposed on the line of DW-1.

**Submissions on behalf of the State**

**27.** Learned Additional Public Prosecutor for the State has defended the judgment of the learned trial court.

**Consideration**

**28.** We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also perused the trial court's records.

**29.** According to the informant (PW-4), the seizure of ganja took place near the *hauda* of Mahi river in village Pachraur on 02.07.2020 at 10:30 PM. The informant had gone on patrolling along with the members of the Bihar Military Police. The informant claims that he apprehended the accused



persons with the help of the police force. He has stated that while trying to flee away, Heera Ram had fallen down at the edge of the road, as a result thereof, he had suffered injury on his left hand. Three plastic sacks were tied with one of the motorcycles which Heera Ram was driving and two plastic sacks were tied with the motorcycle which Dhiranjan Singh was driving. According to the informant, he gave information of this to the senior officials and called the officer and police force on patrolling at the place of occurrence. It is stated that the people from nearby places had assembled and from amongst them, the informant took two independent passersby namely Ganesh Kumar Rai of Jaithar and Raja Kumar of village Murlipur. These two seizure list witnesses have, however, denied their presence at the place of seizure at the relevant time and they have claimed that their signatures were obtained in the police station on blank sheets of paper. This Court finds from the charge-sheet (Exhibit 'P-11/PW-5') that only five persons have been named as witnesses in the charge-sheet. They are (i) Rajesh Kumar, Officer-in-Charge, Taraiya P.S., (ii) Arun Ravidas, Sub-Inspector, Taraiya P.S., (iii) Rishi Muni Rai, Sub-Inspector, Taraiya P.S., (iv) Sumant Ji Bari, Sub-Inspector, Taraiya P.S. and (v) Jamun Prasad, Sub



Inspector, Taraiya P.S. It is evident that at the time of filing of the charge-sheet on 29.09.2020, two seizure list witnesses have not been made charge-sheet witnesses.

**30.** On the point of weighing of the ganja, which was kept in the bags in the plastic sacks, the informant has stated that he got a weighing balance (*taraju batkhara*), from Pachraur Bazar through the police patrolling party. He has given the weight of the bags which were found in the plastic sacks tied with the two motorcycles. He also conducted the body search of the accused persons and according to him, he had given option to the appellants to get themselves searched in presence of a Gazetted Officer/Magistrate but the accused persons-appellants are said to have dispensed with that requirement under Section 50 of the N.D.P.S. Act and allowed the informant to search them. On this point, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Arif Khan @ Agha Khan vs. State of Uttarakhand** (Criminal Appeal No. 273 of 2007) reported in **(2018) 18 SCC 380** in which the Hon'ble Supreme Court has held that compliance of requirement of Section 50 is mandatory and it has been settled by the Hon'ble Supreme Court in the case of **State of Punjab vs. Baldev Singh**



reported in **(1999) 6 SCC 172** and **Vijaysinh Chandubha Jadeja vs. State of Gujarat** reported in **(2011) 1 SCC 609** that it is imperative on the part of the police officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a gazetted officer or a Magistrate. In the said case, the Hon'ble Supreme Court held that since the search and recovery of the contraband charas was not made from the appellant in the presence of any Magistrate or gazetted officer and none of the police officials of the raiding party, who recovered the contraband from him, was a gazetted officer, there was no compliance with Section 50 of the NDPS Act.

**31.** This Court finds that according to the informant, the seizure lists of the ganja were prepared at the place of seizure itself whereafter the seized plastic bags were brought to the police station. The self-statement of the informant (Exhibit 'P-3/PW-4') states that seized ganja was immediately sealed.

**32.** On the point of weighing of the seized ganja, the prosecution witnesses are not consistent. While in the self-statement, the informant states that he got the weighing machine through the patrolling party from Pachraur Bazar, the informant has stated in trial that one Rishi Muni Ram had



brought the weighing balance. The said Rishi Muni Ram (PW-1) has stated that the weighing balance was brought by Chowkidar. This Court finds that the said Chowkidar has not been named by PW-1 and he has not been examined by the prosecution. Further, PW-1 has stated that he was not a member of the raiding party and he was not aware when the accused persons were arrested. According to him, the accused persons were kept in Patti Pachraur village, which is a village of 100-150 houses. From the evidence of PW-1, the statement of PW-4, that it was PW-1 who had brought the weighing balance from Pachraur Market, becomes doubtful. The statement of PW-1 that he was not present at the time of arrest of the accused persons would create further doubt on the statement of PW-4 that Rishi Muni Rai (PW-1) was a member of the raiding party or that the seized ganja were weighed at the place of arrest and seizure as shown by the informant was made. If the self-statement of PW-4 is gone through, it would be found that according to him, the seizure lists were prepared after weighing the ganja after arrival of the second patrolling party who were informed over telephone to come at the place of occurrence but Sumantji Bari (PW-3), who was also not a member of the raiding party and had reached there as a



member of the second patrolling party, has stated that before his reaching to the said place, the seizure had already taken place. A perusal of the seizure lists (Exhibit 'P-1/PW-4' and Exhibit 'P-2/PW-4') would show that while Exhibit 'P-1' was prepared on 03.07.2020 at 1:30 Hrs, Exhibit 'P-2' was prepared at 2:15 Hrs on 03.07.2020. If this was the time of seizure of the ganja, PW-1 and PW-3, who were the members of the second patrolling party, would not have said that the seizure had not taken place in their presence. It is evident that the trial court is not correct in recording a finding that the second vehicle of patrolling duty was also called on the spot and they came along with the weighing balance for measurement of ganja so it is evident that the seizure lists were prepared in presence of the members of the second patrolling party i.e. PW-1 and PW-3. This finding of the trial court becomes doubtful on the face of the evidence of PW-1 and PW-3.

**33.** It is important to take note of the fact that even though the FIR was registered on 03.07.2020 at 6:30 AM, the copy of the *fardbeyan* and the seizure lists were received in the court of learned Special Judge, NDPS, Chhapra, Saran only on 04.07.2020. On the said date, the I.O. produced the seized sealed plastic bags but no application was filed in the court for



certification of inventory, preparation of sample and for sending the samples to the Forensic Science Laboratory.

**34.** It is evident that there was a delay of more than twenty four hours in sending the *fardbeyan* and the seizure lists to the learned jurisdictional court and further no step was taken for certification of the seized articles and preparation of samples. In the kind of the materials, noted by this Court, the fact that the seizure list witnesses were not made charge-sheet witnesses would gain importance. Ganesh Kumar Rai (DW-1) has been shown as a seizure list witness. He has stated that his house is at a distance of eighteen kilometer from Manjhopur Canal and there was no seizure in his presence. He is a resident of village Jaithar under Taraiya Police Station. The second seizure list witness Raja Kumar (DW-2) is a resident of Village-Murlipur under Taraiya Police Station and his house is at a distance of nine kilometer from Manjhopur Taraiya canal. It is evident that presence of these two witnesses in the midnight of 02/03.07.2020 does not appear a normal presence. This Court is of the opinion that their statement to the effect that the seizure had not taken place in their presence is worth believable considering the fact that PW-4 did not submit the FIR and the seizure lists at the earliest opportunity. In the FIR,



he did not comply with the statutory requirement of section 157(1) CrPC by mentioning the date and time of dispatch of the FIR.

**35.** The fact that the seized ganja were weighed at the place of occurrence becomes very doubtful on the face of the evidence of the prosecution witnesses who have made completely contradictory statements with regard to the procurement of weighing balance. We have already discussed that PW-1 has not supported the statement of PW-4 that he had brought the weighing balance from Pachraur Bazar. In this regard, the evidence of PW-2 is completely different. He has stated that the weighing balance had been brought from police station. Complete contradictory statement of the prosecution witnesses on the point of bringing of the weighing balance at the place of occurrence and weighing of the seized ganja would only lead this Court to conclude that the prosecution is not able to prove the place, date and time of seizure. Further, the prosecution is not able to prove that the weighing had taken place at the place of seizure in presence of two independent witnesses in the midnight of 2/3 July 2020.

**36.** It is the stand of the I.O. (PW-5) that he had gone to Chhapra Court with the seized ganja/exhibits on 06.07.2020



for obtaining an order but he was told that because of COVID-19, the court was getting sanitized so it was closed from 06.07.2020 to 08.07.2020 and he was asked to come after 08.07.2020. It appears that the I.O. (PW-5) went to Chhapra Court on 15.09.2020 and after more than two months, he submitted his application for certification and sampling. On 16.09.2020, according to him, the sampling was done by weighing through computer parts and 13-13 gram of ganja was put in small container (*dibba*) which were brought before the court and were sealed, thereafter, the remaining seized ganja were sealed and videography was done. When this sampling was done is not known. It was not done in presence of the accused is also evident from the records.

**37.** On perusal of the ordersheets of the court of learned Special Judge, however, it appears that on 15.09.2020, the learned Special Judge, Saran directed Smt. Kiran Ojha, J.M. First Class, Chhapra to prepare the inventory and photographs of the seized articles as well as the sample of narcotic drugs and psychotropic substances and to send the sample to the Forensic Science Laboratory, as prayed for. The inventory said to have been prepared on 16.09.2020 and certified by the Judicial Magistrate, First Class, Saran at



Chhapra has not been brought on record, instead, a letter bearing Number 72 dated 18.09.2020 written by Kiran Ojha, Judicial Magistrate, First Class, Saran to the District and Sessions Judge, Saran, Chhapra has been brought on record. From Exhibit 'A', it appears that it is a photograph and on the back of it, it is recorded inter alia –

“Exhibit – A – Ganja (143 kg. 300 gms) packed and sealed in five polythene bags

Inventory prepared at Civil Court Saran  
16.09.2020 (Exhibit P-10/PW-5).

**38.** From Exhibit 'P-10', it appears that the ganja produced before the learned Magistrate were packed and sealed in five polythene bags whereas from the self-statement (Exhibit 'P-3/PW-4'), it appears that the seized ganja packets were kept in five plastic sacks. Therefore, there is a change of the bags. It has come in evidence that during this period the seized ganja were kept in the Malkhana of the police station. It is evident that while the seizure lists show seizure of ganja which were kept in five plastic sacks, Exhibit 'P-10/PW-5' mentions “packed and sealed in five polythene bags”. There is no proof of sealing of seized article/ganja at the spot.

**39.** At this stage, this Court would examine the laws relating to search, seizure and disposal of the narcotic drugs



and psychotropic substances. It has been recently summarized by the Hon'ble Supreme Court in the case of **Bharat Aambale** (*supra*). Standing Order No.1 of 88 vide the notification dated 15.03.1988 prescribing the procedure required to be followed for drawing samples from the seized narcotic drugs and psychotropic substances, numbering of samples drawn, sealing, mode of packing, dispatch of samples to the concerned laboratory for test etc. has been discussed. Thereafter, recognizing the importance of dispatch, transit, receipt, safe custody, storage, proper accounting and disposal destruction of the seized drugs and the need for evolving a uniform procedure, the Narcotic Control Bureau issued Standing Order No. 2 of 88 vide the notification dated 11.04.1988 formulating the procedure for seizure, sampling and storage of contraband. In the case of **Union of India vs. Mohan Lal** reported in **(2016) 3 SCC 379**, the Hon'ble Supreme Court has exhaustively explained Section 52A of the NDPS Act, the Standing Orders thereunder and the procedure envisaged under the same for seizure, storage and disposal of narcotic substances. In **Bharat Aambale** (*supra*), the Hon'ble Supreme Court has taken note of the same which we reproduce hereunder for a ready reference:-

“13. In Mohanlal (*supra*) this Court exhaustively



explained the scope of Section 52A of the NDPS Act, the Standing Order(s) issued thereunder and the procedure envisaged under the same for seizure, storage and disposal of narcotic substances as follows:—

**(i)** Section 52A sub-section (1) empowers the Central Government to prescribe the procedure to be followed for seizure, storage and disposal of narcotic substances, and in exercise of the same, the aforesaid Standing Order(s) were issued (as amended from time to time). The relevant observations read as under:—

“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 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.”

**(ii)** As per sub-section (2) of Section 52A, upon seizure of such substance, the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare



an inventory as stipulated under the said provision and then make an application to the magistrate for the purposes of certifying the correctness of the inventory, photographs etc. and to draw representative samples therefrom in its presence. The relevant observations read as under:—

“15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.”

**(iii)** As per Section 52A sub-section (3) as soon as the seizure is effected and the contraband is forwarded, the officer concerned is in law duty-bound to approach the magistrate as soon as possible for the purposes mentioned above including grant of permission to draw representative samples in his presence, which will then be enlisted and certified. Thus, the entire process of drawing of samples has to be in the presence and under the supervision of the magistrate and the entire exercise has to be certified as correct. The relevant observations read as under:—

“16. Sub-section (3) of Section 52-A requires



that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.”

(iv) Section 52A of the NDPS Act does not require drawing of samples at the very time of seizure or even at the spot where the contraband was seized. However, as per sub-section (4) of Section 52A only those samples which are drawn in presence of a magistrate and certified by it will constitute primary evidence for the purpose of the trial. The relevant observations read as under:—

“17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of



seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

(Emphasis supplied)

(v) The scheme of the Act in general and Section 52A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While no strict time-frame can be prescribed into the said provision, yet the entire process of sampling and certification ought to be done in a reasonable period without any undue delay. The relevant observations read as under:—

“19. [...] There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close



watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.”

(vi) As per Section 55 of the NDPS Act the officer-in-charge of a police station shall take charge of and keep in safe custody the remaining seized article pending orders of the magistrate concerned for its disposal or destruction. Further, as per the Standing Order(s), such seized substances must be stored in appropriate safe vaults or godowns as prescribed thereunder as far as possible. The relevant observations read as under:—

“20. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer-in-charge of a police station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by the learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government



inasmuch as Standing Order No. 1 of 1989 has made specific provisions in regard to the same. Section III of the said Order deals with “Receipt of Drugs in Godowns and Procedure” which inter alia provides that all drugs shall invariably be stored in “safes and vaults” provided with double-locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.”

(Emphasis supplied)

**(vii)** As per Clause 4 of the notification dated 16.01.2015 amending the Standing Order No. 1 of 1989, the officer in charge of the police station shall within 30-days from the date of receipt of chemical analysis report of the seized substances apply to the magistrate for disposal of the remaining substance.

“27. Section 52-A as amended provides for disposal of the seized contraband in the manner stipulated by the Government under sub-section (1) of that section. Notification dated 16-1-2015, in supersession of the earlier Notification dated 10-5-2007 not only stipulates that all drugs and psychotropic substances have to be disposed of but also identifies the officers who shall initiate action for disposal and the procedure to be followed for such disposal. Para 4 of the Notification, inter alia, provides that officer in charge of the police station shall within 30 days from the date of receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate



under Section 52-A(2) in terms of Annexure 2 to the said Notification.”

**(viii)** After the aforesaid application is allowed, the concerned officer is required to submit details of the seized items to the Chairman of the Drugs Disposal Committee for a decision on disposal along with a copy to the officer in charge of the godown where such substance is stored. Thereafter, the Drugs Disposal Committee shall order the disposal in terms of the procedure envisaged under Clauses 7 & 8, respectively of the Standing Order as amended by notification dated 16.01.2015 and thereafter issue a certificate of destruction or disposal.

“28. Sub-para (2) of Para 4 provides that after the Magistrate allows the application under sub-section (3) of Section 52-A, the officer mentioned in sub-para (1) of Para 4 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 seized items to the Chairman of the Drugs Disposal Committee for a decision by the Committee on the question of disposal. The officer shall also send a copy of the details along with the items seized to the officer in charge of the godown. Para 5 of the Notification provides for constitution of the Drugs Disposal Committee while Para 6 specifies the functions which the Committee shall perform. In Para 7 the Notification provides for procedure to be followed with regard to disposal of the seized items, while Para 8 stipulates the quantity or the value up to which the Drugs Disposal Committee can order disposal of the seized items. In terms



of proviso to Para 8 if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drugs Disposal Committee is required to send its recommendations to the head of the department who shall then order their disposal by a high-level Drugs Disposal Committee specially constituted for that purpose. Para 9 prescribes the mode of disposal of the drugs, while Para 10 requires the Committee to intimate to the head of the Department the programme of destruction and vest the head of the Department with the power to conduct a surprise check or depute an officer to conduct such checks on destruction operation. Para 11 deals with certificate of destruction while Paras 12 and 13 deal with details of sale to be entered into the godown register and communication to be sent to the Narcotics Control Bureau.”

**40.** The Hon’ble Supreme Court has reviewed the case-laws on the subject viz **Noor Aga vs. State of Punjab** reported in **(2008) 16 SCC 417**, **Union of India vs. Jarooparam** reported in **(2018) 4 SCC 334**, **Yusuf @ Asif v. State** reported in **2023 SCC OnLine SC 1328**, **Mangilal vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 862**, **Simarnjit Singh vs. State of Punjab** reported in **2023 SCC OnLine SC 906**, **Mohammed Khalid vs. State of Telangana** reported in **(2024) 5 SCC 393**, **Narcotics Control Bureau vs. Kashif** reported in **2024 SCC OnLine SC 3848**,



**Khet Singh vs. Union of India** reported in (2002) 4 SCC 380,  
**State of Punjab vs. Makhan Chand** reported in (2004) 3  
SCC 453 and ultimately, held in paragraph '31', '32' and '33'  
as under:-

“31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and does not exhaustively lay down the evidentiary rules for proving seizure or recovery, nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires



confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in *Noor Aga* (supra).

**33.** Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.”

**41.** The law on the subject has been summarized by the Hon’ble Supreme Court in the case of **Bharat Aambale** (*supra*) in paragraph ‘50’ which are being reproduced hereunder for a ready reference:-

“**50.** We summarize our final conclusion as under:—



(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in



original is actually produced before the court or not.

**(IV)** The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

**(V)** Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

**(VI)** If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

**(VII)** Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an



adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

**(VIII)** Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

**(IX)** The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

**(X)** Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.



**42.** Recently in the case of **Surepally Srinivas vs. The State of Andhra Pradesh** (now State of Telangana) in Criminal Appeal No. 1474 of 2025 reported in **2025 SCC OnLine SC 683**, the Hon'ble Supreme Court has held in paragraph '13', '14' and '15' as under:-

“**13.** In *Bharat Aambale* (supra), this Court held that the purport of Section 52-A, NDPS Act read with Standing Order No. 1/89 extends beyond mere disposal and destruction of seized contraband and serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. This decision stresses upon the fact that what is to be seen is whether there has been substantial compliance with the mandate of Section 52-A and if not, the prosecution must satisfy the court that such non-compliance does not affect its case against the accused. This is also what has been held in *Kashif* (supra).

**14.** In the present case, from the evidence on record, it can be seen and it is clear that the seized contraband was not properly sealed. Coupled with this is the fact of the seized contraband not being produced before the trial court prior to 3<sup>rd</sup> July, 2010. It is difficult to accept the prosecution case that though there may not have been strict compliance of Standing Order No. 1/89, the seized contraband was not tampered at all. Keeping of the seized contraband by PW-3 in a separate room in his office for fifteen days could give rise to an allegation that the seized contraband



was by itself substituted and some other items planted to falsely implicate the accused. To avoid suspicious circumstances and to ensure fair procedure in respect of search and seizure, it is always desirable to follow the standing order which provides suitable guidance for the officers investigating crimes under the NDPS Act. Should there be any departure, the same must be based on justifiable and reasonable grounds. We are, satisfied, on appreciation of the evidence on record, that the possibility of tampering during this fifteen-day period cannot be totally ruled out and that not only has there been no substantial compliance of the standing order, the departure has also not been justified.

**15.** We have also found from the materials on record that there has been clear non-compliance with the provisions contained in Section 52-A of the NDPS Act. Either possibly due to lack of experience of the investigating officer or his lack of knowledge of the relevant provisions of the NDPS Act, there were lapses which were duly noted by the Sessions Judge. Thus, we are unable to hold that there was primary and reliable evidence before the trial court in respect of the offence committed. The onus of proving that compliance with Section 52-A did not affect the case of the prosecution has not been duly discharged by the prosecution.”

**43.** Keeping in view the aforementioned judgments of the Hon’ble Supreme Court, this Court has closely



scrutinized the evidence of the I.O. (PW-5). In his examination-in-chief, the I.O. has stated that he took charge of the investigation on 03.07.2020 at 6:30 AM thereafter, he perused the FIR, seizure list and the seized exhibits. He recorded the restatement of Rajesh Kumar, Officer-in-charge (PW-4), who supported the prosecution case. He also recorded the statement of Arun Ravidas, ASI and proceeded for the place of occurrence at 9:00 AM. He has given the boundary of the place where the seizure was made and accused were arrested. The boundary of the place is as under:

North – after the canal, hauda of Mahi Nadi;  
South – old and dilapidated office of the Canal Department and *palani* of Rajeshwar Mahto and thereafter agricultural land of Lakshmi Singh;  
East – pitch road from Taraiya to Manjhopur Canal; and  
West – pakki road from Manjhopur to towards Taraiya Canal.

**44.** In his examination-in-chief, he does not mention to have recorded the statement of the seizure list witnesses. He received the confessional statement of the accused Hira Ram on 04.07.2020 from the Officer-in-charge of the police station which he recorded in the case diary. Thereafter, he sent the accused persons in police custody with the seized ganja with



necessary documents. It is evident from this part of the examination-in-chief of PW-5 that even though he had received the FIR on 03.07.2020 at 6:30 PM but he did not send the same to the jurisdictional court. It was sent to the jurisdictional court only on 04.07.2020. In his further examination-in-chief, PW-5 has stated that he did not get order for examination of the seized ganja as per the seizure list, he returned after production of the accused persons, with the seized ganja and kept it in the Malkhana. Here it is important to note that on 04.07.2020, the I.O. (PW-5) did not file any application seeking certification of the inventory and preparation of sample from the seized ganja. He simply returned with seized ganja and claims to have kept it in the Malkhana. No seal was there on the seized ganja. This is a vital discrepancy on the part of the I.O. The I.O. (PW-5) brought the seized ganja from Malkhana to the court only on 16.09.2020 i.e. after more than two months and then samples are said to have been prepared. We have already pointed out that Exhibit 'A' which has been marked Exhibit 'P-10/PW-5' mentions 143.80 kg of ganja kept in five polythene bags whereas as per seizure list, those were kept in plastic sacks. The polythene bags and the plastic sacks are not the same and one thing. It creates huge doubt as to whether the polythene



bags produced before the learned court were the same and one which were seized by PW-4.

45. It further appears that the samples were prepared on 16.09.2020 and were packed in 13-13 gram small *dibba* of tin on 16.09.2020 and the sealed sample was kept in the Malkhana for another thirteen days whereafter it was sent to the Director of Foreign Science Laboratory, Gannipur, Muzaffarpur vide DR No. 1296/2020 dated 29.09.2020. From Exhibit 'B' it appears that it is a photograph of the sample which was sent to FSL, Muzaffarpur on 16.09.2020 but the fact remains that the sample was not sent to FSL, Muzaffarpur on 16.09.2020 rather it was taken to the Malkhana where it was kept for thirteen days.

46. Contrary to the opinion of the Hon'ble Supreme Court, the sampling was not done in presence of the accused so what have been held in paragraph 50 (ii) of the judgment in the case of **Bharat Aambale** (*supra*) have not been followed.

47. The FSL report (Exhibit 'P-12') is the report of the FSL, Muzaffarpur. On the front page of the report it does not mention memo/letter number though the date is of 16.09.2020. The DR number given by the I.O. (PW-5) in his deposition is not mentioned on the report of the FSL, the report



shows the weight of the sample approximately twelve gram.

**48.** Exhibit 'C' is the photograph of the sample which was sent to CFSL, Kolkata on 16.09.2020 but the report of the Kolkata lab has not come and the same is not available on the record. I.O. has filed the charge-sheet on 29.09.2020 i.e. on the same day when the sample was sent to FSL, Muzaffarpur.

**49.** Exhibit 'D' is the sample which was kept for trial. When PW-5 came to depose in course of trial on 27<sup>th</sup> July, 2022, he has stated in paragraph '21' of his deposition that being I.O. of the case it was his responsibility to know that from where the weighing balance was brought but he had not inquired about it. In paragraph '24' he has stated that the seized exhibits were not before him in the court. He had not recorded statement of any independent witnesses and the persons in the neighborhood of the place of seizure.

**50.** Learned counsel submits that the informant (PW-4) has stated in his deposition that near the place of seizure there are some small shops. This Court further finds that despite presence of some small shops near the place neither the shop owners were examined by the I.O. nor the seizure list witnesses were examined. PW-4 has admitted in paragraph '19'



of his deposition that the sealed exhibit which he had brought in the court was kept in another sack and the packets inside the *bora* (sacks) were sealed by him. It is evident that the Exhibit-A the inventory (Ext P/10) has been interfered with and the bags have been changed once again. In paragraph '25' he has stated that he was producing four *boras* (sacks). He explained in paragraph '29' that the '*boras*' which were there at the time of seizure were damaged by rats, therefore, he had brought the seized material exhibits in another four bags. He admits that at the time of seizure, the seized materials were sealed in five bags but at this stage, those material exhibits came in four bags so he brought the seized articles in four bags.

**51.** On going through the deposition of PW-4 and PW-5 and looking into the materials available on the record, this Court finds that Exhibit – A – ganja (143 kg 300 gms) packed and sealed in five polythene bags as per the inventory prepared at Civil Court, Saran on 16.09.2020 were not produced before the trial court rather the ganja bags were brought in four *boras* (sacks) in the court. The Exhibit 'D' which was the sample kept for trial has not been produced before the trial court.

**52.** In the kind of materials discussed hereinabove,



this Court is of the considered opinion that the prosecution in this case has failed to establish the chain of custody, corroborate the seizure with credible testimony and prove its case beyond all reasonable doubt, in the given circumstance, this cannot be said to be a case of mere non-compliance with Section 52A. In the totality of the circumstances, the prosecution case does not inspire confidence. In the opinion of this Court, the prosecution is unable to establish its case beyond reasonable doubt.

**53.** The impugned judgment and order are set aside giving benefit of doubt to the appellants.

**54.** These appeals are allowed. The appellants shall be released forthwith if not wanted in any other case.

**55.** Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

**(Rajeev Ranjan Prasad, J)**

**(Ashok Kumar Pandey, J)**

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