

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 538 of 2019

With

CRAN 2 of 2024

Md. Yusuf

Vs.

The State of West Bengal

For the appellant : Mr. Swapan Kumar Mallick, Adv.
Mr. Mazhar Hossain Chowdhury, Adv.
Ms. Sagufta Saba Yasmin, Adv.
Ms. Chandrima Debnath, Adv.

For the State : Mr. Sanjoy Bardhan, Adv.
Mr. Ranadeb Sengupta, Adv.

For the State in : Ms. Amita Gaur, Sr. Govt. Adv.
CRAN 2 of 2024 Ms. Debjani Desgupta, Adv.

Heard on : 19.05.2025

Judgment on : 23.05.2025

Md. Shabbar Rashidi, J.:-

1. Appeal is directed against the judgment and order of conviction dated July 3, 2019 and order of sentence dated July 4, 2019 passed by learned Judge, Special Court, NDPS Act-cum-3rd Additional Sessions Judge, Malda in connection with Special Case No. 04 of 2017.

2. By the impugned judgment of conviction, the appellant was convicted for the offence punishable under Section 15(C) of the Narcotics Drugs and Psychotropic Substances, 1985 (for short, NDPS Act). By the impugned order of sentence, the convict appellant was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- for the offence punishable under Section 15(C) of the NDPS Act. In default of payment of fine, the appellant was directed to undergo rigorous imprisonment for a further period of one year.

3. It is the case of the prosecution that on January 21, 2017 at 12:45 hours, the de-facto complainant Sub Inspector Anup Kumar Sinha of English Bazar P.S. received a secret information that one vehicle bearing registration No. UP25-AT/8776 loaded with huge quantity of *Poppy pods* was about to pass through Rathbari More through National Highway 34.

4. Receiving such information, the de-facto complainant immediately informed the matter to the Inspector-in-Charge of English

Bazar P.S. and diarized the matter vide English Bazar P.S. G.D.E. No. 1301 dated January 21, 2017. The Inspector-in-Charge of English Bazar P.S., accordingly directed the de-facto complainant to look into the matter.

5. Being so directed, the de-facto complainant accompanied by A.S.I. Omar Faruque, Constable/615 Sumanta Mishra and other civic volunteer of English Bazar P.S. proceeded to Rathbari area to work out the information. After making a note vide English Bazar P.S. G.D.E. No. 1302 dated January 21, 2017 at 12:55 hours. The police team reached Rathbari at about 13:05 hours in their Government vehicle bearing registration No. WB 24B/0852 and put up ambush. The police party called upon two local witnesses informing the purpose, namely, Manoj Saha and Sanjib Sarkar. The police party also offered the witnesses to search their persons which they declined and agreed to accompany the police party.

6. The de-facto complainant also stated that after a while, they found one truck bearing registration No. UP25AT/8776 as indicated by the source coming from the side of Kaliachak. The police team intercepted the vehicle in front of hotel Payel at Rathbari under English Bazar P.S. The driver and other persons on board of the said vehicle tried to flee away but they were detained by the police party. On query,

the detained persons disclosed that they were carrying *Poppy pods*. They disclosed their identity as Ibrahim Sk. and Md. Yusuf. The de-facto complainant also stated in his written complaint that he served notice upon the detained persons informing them their right to be searched in presence of gazetted officer. They agreed to be searched in presence of a gazetted officer in writing. Accordingly, the de-facto complainant informed the Inspector-in-Charge, English Bazar P.S. over telephone requesting him to come to the place of occurrence at about 13:25 hours. In pursuance of such request, the Inspector-in-Charge came to the spot at about 13:35 hours. In course of such search, huge amount of *Poppy pods* with jute ropes were recovered from the vehicle. The de-facto complainant tested the recovered articles resulting in positive result for contraband substance, the de-facto complainant brought the recovered vehicle loaded with the contraband articles at Saraf (M.D.) weigh bridge at Kamlabari, Jadupur under English Bazar P.S. along with the detained persons. He further stated that the weight of the loaded truck was found to be 15 tons 160 kgs. whereas the weight of empty truck was 10 tons 845 kgs. according to the R.C. book of the vehicle. According to the de-facto complainant, the weight of the loaded contraband i.e. *Poppy pods* appeared to be 4 tons 3 quintal 15 kgs. He collected the weight certificate.

7. Thereafter, the de-facto complainant drew two samples quantity weighing 50 gms. each from the recovered contraband with the help of weighing machine and weight. He carried the two sample packets to police station and marked them separately. He also stated that after weighing he along with the detained vehicle and recovered contraband, returned to Rathbari in front of Payel hotel. After apprising the Inspector-in-Charge, English Bazar P.S., the de-facto complainant proceeded to seize the *Poppy pods* and drawn up samples together with the vehicle bearing registration No. UP25-AT/8776 under seizure list in presence of witnesses and gazetted officer. The process of seizure was carried between 14:15 hours to 14:30 hours on January 21, 2017. Thereafter, the seized contraband along with the sample packets were sealed and labelled in presence of the witnesses and the gazetted officer at the spot. Thereafter, the persons carrying the contraband were arrested under proper arrest memo. The detained persons along with the seized contraband articles were produced before the Inspector-in-Charge, English Bazar P.S. with the written complaint.

8. On the basis of such written complaint, English Bazar P.S. Case No. 66/17 dated January 21, 2017 under Sections 15(c)/22/29 of the NDPS Act was started against the FIR named accused persons.

9. Police took up investigation of the case and on completion of investigation submitted charge-sheet against two accused persons. However, one of the accused i.e. Ibrahim Sk. was found to be a juvenile. By an order passed on February 8, 2017, the learned Trial Court split up the trial and forwarded the juvenile accused to the Juvenile Justice Board at Malda.

10. Accordingly, accused Md. Yusuf was sent up for trial before the learned Special Court. On the basis of materials in the Case Diary, charge under Section 15(c) of the NDPS Act was framed against accused Md. Yusuf on June 22, 2017. He pleaded not guilty to the charge and claimed to be tried.

11. The said accused stood trial for the offence punishable under Section 15(c) of the NDPS Act and was convicted by learned Special Court. Hence, the appeal.

12. It has been submitted on behalf of the learned Advocate for the appellant that the appellant was falsely implicated in the case having committed no offence at all. It was further submitted that the source information was first informed to the Inspector-in-Charge, English Bazar P.S. The self-same Inspector-in-Charge acted as a gazetted officer at the time of search and recovery. In such view of the case, it is submitted, the investigation of the case was biased.

13. Learned Advocate for the appellant also submitted that the provisions of Section 52A of the NDPS Act has not been adhered to, therefore, the entire trial of the case has vitiated. In support of such contention, learned Advocate for the appellant relied upon **(2024) 5 Supreme Court Cases (Mohammed Khalid And Another vs. State of Telangana)**. Learned Advocate also submits that there was no independent witness at the time of search and seizure of the contraband. The persons who have stood as independent witnesses have been a witness in other similar cases on behalf of the police. It was submitted that the said witnesses are stock witnesses of police and cannot be relied upon to secure conviction of the appellant.

14. Learned Advocate for the State, on the other hand, submitted that the prosecution has been able to prove the case of the prosecution with the help of ocular as well as documentary evidence. It was submitted that the evidence on record sufficiently proves that the appellant was found carrying contraband narcotics without any valid document for the possession or carriage thereof. Learned Advocate for the State also submits that the seized contraband was produced in Court with the conveyance. It was proved and admitted in evidence as material exhibit. Appellant was apprehended from the offending truck carrying the contraband articles. The evidence belongs to the appellant

and for such reason it can safely be held that the appellant was in conscious possession of illegal narcotics. If that be so, non-compliance, if any, of Section 52A of the NDPS Act could not vitiate the trial. Learned Advocate for the State supports the impugned judgment of conviction and order of sentence passed by learned Trial Court.

15. In order to prove the charge, prosecution examined as many as 11 witnesses. In addition, prosecution also relied upon certain documentary as well as material evidence.

16. The de-facto complainant himself deposed as P.W. 1. He stated that on January 21, 2017 he was posted at Rathbari T.O.P. under English Bazar P.S. as Sub Inspector of Police. On the said date, he received a source information and in pursuance of the direction of the Inspector-in-Charge of the police station, he went to work out the source information being accompanied by A.S.I. Omar Faruque, Constable Sumanta Mishra and some civic volunteer. They arrived at Rathbari More and contacted with the source informer. They laid an ambush. He also stated that on the identification of the source, he intercepted a lorry. On checking, the police team found *Poppy pods* loaded in the lorry. Thereafter, he informed the Inspector-in-Charge and requested him to come to the spot. He also collected two local witnesses

disclosing their intention and offer the witnesses to search which they declined. In the meantime, Inspector-in-Charge also arrived at the spot.

17. P.W. 1 also stated that in presence of the Inspector-in-Charge and the witnesses, he thoroughly searched the lorry. He detained driver and cleaner of the lorry. He then took the vehicle to Weigh Bridge for weighing. On weighing, the lorry was found to be loaded with 4 tons and few quintals of *Poppy pods*. P.W. 1 also stated that from the weigh bridge the police party again went to the place of occurrence. Thereafter, the contraband *Poppy Pods* and the vehicle were seized under seizure list. The seized articles were labelled. The driver and the cleaner of the vehicle were arrested and brought to police station along with the seized articles.

18. P.W. 1 also stated that he served notice upon the driver and cleaner before seizure of the articles. The seized articles were made over to Malkhana-in-Charge. P.W. 1 identified the appellant in Court. He also proved the seizure list under which the contrabands were seized as well as labels attached to the seized articles. He proved the relevant G.D. Entries. He also identified the seized articles and the vehicle produced at the trial.

19. Police constable deposed as P.W. 2. He stated that on January 21, 2017 he was posted at Rathbari Outpost of English Bazar P.S. On

the said date, he accompanied S.I. Anup Kumar Singha for holding a raid under the instruction of the Inspector-in-Charge near Payel Hotel on the National Highway. A.S.I. Omar Faruque was also accompanying them. He further stated that S.I. Anup babu searched a lorry coming from Kaliachak side and informed that the lorry was loaded with *Poppy pods* which were seized by Anup Babu. The vehicle was weighed at Jadupur and it was found to contain 4 tons 15 quintals of *Poppy pods*. The contraband articles were seized under a seizure list to which he signed. He proved his signature on the seizure list. P.W. 1 also identified his signatures on the labels. P.W. 2 also stated that two persons, namely, Ibrahim Sk. and Md. Yusuf were arrested. Nothing favourable could be elucidated from the cross-examination of such witness.

20. An Assistant Sub-Inspector of Police was examined as P.W. 3. He stated that on January 21, 2017 he was posted at English Bazar P.S. and on that day he accompanied S.I. Anup babu to Rathbari. Constable Sumanta Mishra and two civic volunteers accompanied them. At about 1:00 p.m. one vehicle was detained at Rathbari in front of Payel Hotel. On the basis of a source information, P.W. 3 detained the vehicle as per the direction of Anup babu. He also stated that Anup babu issued notice to the driver to the effect that he wanted to search

the vehicle as the same was carrying '*posto khosa*'. Thereafter, Anup babu asked the driver whether he wanted to be searched in presence of a gazetted officer or a Magistrate to which the driver replied that he may be searched in presence of a gazetted officer. Accordingly, Anup babu contacted Inspector-in-Charge and, consequently, the Inspector-in-Charge came to the place of occurrence. The vehicle was searched in presence of the Inspector-in-Charge and huge quantity of '*posto khosa*' was found loaded in the vehicle. P.W. 3 also stated that the truck was taken to Jadupur near Gabgachi for weighing and it was discovered that 4 tons 3 quintals and 15 kgs. of '*posto khosa*' was loaded in the vehicle. The vehicle was thereafter brought to the place of occurrence from the weigh bridge where seizure was made. S.I. Anup babu arrested two persons. The name of the driver of the vehicle was Yusuf Ali. P.W. 2 could not recollect the name of the other person. He identified the driver of the vehicle in Court. P.W. 3 also proved his signature on the seizure list dated January 21, 2017 and on the labels attached to the seized articles.

21. A civic volunteer deposed as P.W. 4. He stated that on January 21, 2017 he was attached to English Bazar P.S. as civic volunteer. On the said date at about 1:00 p.m. he accompanied S.I. Anup babu to Rathbari. Besides P.W. 4 another civic volunteer Akhil Bagchi and other

police personnel also accompanied S.I. Anup Kumar Singha. He further stated that the raiding party was standing on Rathbari. At the direction of Anup babu, he along with other police personnel intercepted a lorry reportedly loaded with '*posto khosa*'. He further stated that after the lorry was stopped, S.I. Anup Singha called the Inspector-in-Charge who came to the place of occurrence and search was conducted upon the lorry. The lorry was directed to be taken to Kamlabari for weighing, after weighing the lorry returned to the place of occurrence at Rathbari. P.W. 4 also stated that S.I. Anup Singha drew samples of '*posto khosa*' from the lorry. On weighing, the lorry was found to contain 4 tons of '*posto khosa*' which was seized under a seizure list. P.W. 4 also signed on the seizure list besides this. Thereafter, S.I. Anup Singha arrested two occupants of the lorry. He identified the driver of the lorry in Court. The witness was cross-examined by the defence but nothing favourable could be extracted.

22. Another civic volunteer deposed as P.W. 5. He stated that on January 21, 2017 he was posted at English Bazar P.S. as civic volunteer. On that day he accompanied S.I. Anup Kumar Singha to Rathbari. Besides himself there were other police personnel in the team who went to Rathbari at about 12:30/1:00 p.m. P.W. 5 also stated that at Rathbari one vehicle coming from Kaliachak was detained as per the

directions of S.I. Anup babu. Two occupants of the vehicle were detained who disclosed their names as Ibrahim Sk. and Md. Yusuf. Md Yusuf was the driver. He identified the driver in Court.

23. P.W. 5 also stated that on interrogation, the police team came to know that they were carrying '*posto khosa*' in the vehicle. He further stated that the accused person demanded presence of a gazetted officer during their search. S.I. Anup Singha then called the Inspector-in-Charge of English Bazar P.S. After the arrival of the Inspector-in-Charge, the accused persons and the lorry were searched. On search, the vehicle was found loaded with '*posto khosa*' covered by a black tarpaulin and tied with ropes. The vehicle was taken to Kamlabari weigh bridge for weighing and it was found to contain 4 tons 3 quintals and 15 kgs. of '*posto khosa*'. The vehicle was again brought to the place of occurrence and seizure and labelling was made.

24. The Inspector-in-Charge of English Bazar P.S. deposed as P.W. 6. He stated that on January 21, 2017 he was posted at English Bazar P.S. as Inspector-in-Charge. He also stated that on the said date S.I. Anup Kumar Singha of English Bazar P.S. had intercepted a truck at Rathbari near Payel Hotel bearing registration of Uttar Pradesh on the basis of a source information. He further stated that when S.I. Anup Singha found the truck was carrying *Poppy straw*, he requested P.W. 6

to come to the spot to act as a gazetted officer. S.I. Anup Singha called P.W. 6 at about 1:30 p.m. and on receiving of such call P.W. 6 reached the spot at about 2:00 p.m. After his arrival, the truck was taken to Kamlabari weigh bridge for weighing. On weighing, the truck was found loaded with 4315 kgs. of *Poppy straw*. He further stated that two occupants of the truck, namely, Md. Yusuf and Ibrahim Sk. were arrested by S.I. Anup Singha. He also seized truck loaded with *Poppy straw* under a seizure list in presence of P.W. 6 and other witnesses. He also took samples of *Poppy straw* and sealed and labelled them. P.W. 6 put his signature on such labels. P.W. 6 proved his signatures on the seizure list as well as on the labels. P.W. 6 was also cross-examined by the defence. In his cross-examination, he stated that *Poppy straw* was loaded in the truck and was not kept in any sort of container or sack. It was covered by a red tripol. He also stated that on the date of his examination in Court, the sample packets or the seized alamats were not produced. He admitted that his signatures did not contain any endorsement that the search was made in his presence.

25. A worker of Saraf (M.D.) weigh bridge at Jadupur was examined as P.W. 7. In his examination, P.W. 7 stated that he was aware of any incident of June 26, 2017. The witness was declared hostile by the prosecution and in his cross-examination on behalf of the

prosecution P.W. 7 denied that on January 21, 2017 at about 2:00 p.m. S.I. Anup Singha and other police force brought a vehicle bearing registration No. UP25-AT/8776 to Saraf (M.D.) weigh bridge for weighting. He also denied to have stated before police that on weighing the gross weight of the truck was found to be 15 tons and 160 kgs. and by deducting the weight of the vehicle in accordance with the RC book, it was found to be loaded with 4 tons 315 kgs. of goods. He also denied having issued the weighing slip to the police. The defence declined to search the witness.

26. A local witness, e.g., Manoj Saha deposed as P.W. 8. He stated that on January 21, 2017 at about 1:00 p.m. he was going towards 420 More from Rathbari More with his friend Sanjib Sarkar on foot. On the way he found some police personnel in front of Payel Hotel on the National Highway. P.W. 8 also stated that S.I. Anup babu of English Bazar called them and told that they had information that one truck loaded with illegal articles would come at that place. He further stated that after about 10 or 15 minutes he saw the police intercepted a truck which was coming from Kaliachak side and proceeding towards 420 More. Police brought down the two occupants of the truck and told that they would search them as well as the truck. The detained persons stated that they would not allow the search in absence of any senior

officer. P.W. 8 also stated that after sometime, Inspector-in-Charge of English Bazar P.S. came there. The body of the truck covered by red tarpaulin was opened and upon removing the tarpaulin it was found that '*posto khosa*' was loaded in the truck. P.W. 8 boarded the truck as per direction of police and the truck was taken to weigh bridge near Jadupur Kamlabari. It was weighed and, thereafter, returned to the place of occurrence in front of Payel Hotel. P.W. 8 also stated that he was informed by the police that the net weight of the *Poppy straw* was 4 tons 3 quintals and some 15 kgs. Thereafter, the police officers started preparing papers. P.W. 8 was informed that police had arrested two occupants of the truck. He also stated that the police told him that since the entire incident was witnessed by him, he will have to put his signature on the paper. Accordingly, P.W. 8 signed on such papers. He proved his signatures on the seizure list dated January 21, 2017 and on Exhibits – 2, 3 and 4.

27. In his cross-examination, P.W. 8 stated that he knew S.I. Anup Singha because he was a resident of the same locality. He, however, could not recall if he was a witness in any other case of S.I. Anup babu.

28. P.W. 9 is the friend of P.W. 8. He identified his signatures on the seizure list dated January 21, 2017 as well as on the labels attached to

the seized narcotics. He stated that on January 21, 2017, he was going towards 420 more with his friend Manoj Saha i.e. P.W. 8. On his way, near Payel Hotel, he saw a gathering of police personnel. He also saw that police personnel had intercepted a lorry coming from Kaliachak side and were talking to the occupants of such vehicle. He had suspicion that the lorry contained some illegal materials.

29. He further stated that the police officers present at the spot sent information to English Bazar P.S. Thereafter, Inspector-in-Charge of English Bazar P.S. arrived there. On his arrival, polythene cover of the lorry was removed and it was discovered that '*posto khosa*' was loaded in the lorry. Police then took the lorry to a weigh bridge at Kamlabari and brought the lorry back. The police then prepared the papers and asked P.W. 9 to sign on it. The occupants of the lorry were arrested by police and, thereafter the arrested persons and the apprehended lorry were taken to the police station. P.W. 9 stated that the incident took place at about 12:30/1:00 p.m. near Payel Hotel.

30. The investigating officer of the case deposed as P.W. 10. He stated that on January 21, 2017 he was posted as Probationary Sub-Inspector of Police at English Bazar P.S. On the said date the Inspector-in-Charge recorded English Bazar P.S. Case No. 66/17 dated January 21, 2017 on the basis of a written complaint lodged by S.I. Anup Kumar

Singha. The F.I.R. was recorded by S.I. Animesh Samajpati of English Bazar P.S. as recording officer as the regular Inspector-in-Charge is out of the police station at the time. P.W. 10 was endorsed with the investigation of the case.

31. P.W. 10 also stated that being endorsed with the investigation of the case he received the written complaint and the documents relating to search, seizure and arrest from the recording officer. He examined the complainant but did not record his statement as it was a reiteration of the written complaint. P.W. 10 examined the available witnesses, arrested persons as well as the members of the raiding party. P.W. 10 also visited the place of occurrence and prepared a rough sketch map of the place of occurrence with index. He also examined the Inspector-in-Charge of the police station and seized the weighing balance used by the complainant. In the course of investigation, he also obtained police remand of the accused. He examined the staff of the weigh bridge where the seized lorry was weighed being Saraf (M.D.) weigh bridge at Jadupur besides N.H. 34. P.W. 10 also collected the samples and sent the same to Central Forensic Science Laboratory, Kolkata (for short, 'CFSL') for examination after observing the necessary formalities. He also sent Magistrate to collect CFSL report. On completion of investigation, P.W. 10 submitted

charge-sheet against the appellant Md. Yusuf and a juvenile in conflict of law Ibrahim Sk.

32. P.W. 10 proved the endorsement of receipt of the written complaint as well as the formal F.I.R. prepared in the pen and signature of S.I. Animesh Samajpati. He also proved the seizure list dated January 21, 2017 through which weighing balance was seized by him, he also proved the rough sketch map with index of the place of occurrence as well as the report of the CFSL. He identified the appellant in Court. P.W. 10 also stated that after verification he ascertained that the appellant was not owner of the seized lorry.

33. P.W. 10 further stated that during investigation he examined and recorded the statement of witness Setaur Rahaman. The said witness had stated that on January 21, 2017 at about 2:00 p.m. Inspector-in-Charge of English Bazar P.S. S.I. Anup Kumar Singha and other police force brought one vehicle bearing registration No. UP25-AT/8776 to Saraf (M.D.) weigh bridge for weighing. P.W. 10 also stated that the said witness had stated before him that on weighing the gross weight the truck was found to be 15 tons and 160 kgs. and by detecting the weight of the vehicle in accordance with the RC Book of the vehicle it was found to be loaded with 4 tons 315 kgs. of goods and, thereafter, he issued the weighing slip which was taken away by police with the

truck. P.W. 10 also stated that witness Setaur Rahaman had also stated before him that at that time he had come to know from police that the truck was loaded with illegal *Poppy straw*.

34. In his cross-examination P.W. 10 stated that he did not try to examine the employees of Payel Hotel. He also did not seize the G.D. Book, Malkhana Register or Command Certificate of the members of the raiding party. He admitted that he did not examine S.I. Animesh Samajpati. P.W. 10, in his cross-examination, also stated that he did not make any prayer for pre-trial disposal of the seized *Poppy straw* under Section 52A of the NDPS Act containing two sealed packets each containing some dried herbs and labels with the seal of the CFSL. The two sample packets containing remnants of the sample were confronted with P.W. 10 in his cross-examination which was admitted in evidence on behalf of the defence. In cross-examination P.W. 10 also stated that the witness Omar Faruque (P.W. 3) did not make a statement to the effect that Anup babu had given option to the accused to be searched in presence of a Magistrate.

35. The owner of the weigh bridge was examined as P.W. 11. He stated that he was the owner of the weigh bridge at Kamlabari, Jadupur under the name and style of Saraf (M.D.) weigh bridge which has been in operation since 1995. He stated that after weighing the vehicle,

weighing slip was issued from his weigh bridge. P.W. 11 was confronted with a weighing slip dated January 21, 2017 which he identified to be issued from his weigh bridge. In his cross-examination, P.W. 11 stated that Setaur Rahaman (P.W. 7) was the staff of his weigh bridge since inception who can say the registration number of the vehicles weighed at his weigh bridge. He stated that the weighing slip shown to him did not contain the name of the person who issued it, however, he stated that weighing records of last 5000 vehicles were maintained in a computer.

36. From the evidence on record, it transpires that the police personnel of English Bazar P.S., upon source information, intercepted a vehicle. It also appears that the said vehicle was found to contain huge quantity of *Poppy pods* loaded therein. The vehicle was intercepted, the driver and the cleaner of the vehicle were apprehended. They failed to produce any valid document for carrying the *Poppy pods*. It was seized by the police under seizure list. Exhibit-1 is the said seizure list which goes to show that 4 tons 3 quintals and 15 kgs. of *Poppy pods* and the truck bearing registration No. UP25-AT/8776 were seized by the raiding party. Exhibit-1 also shows that two sample packets of 50 gms. each were drawn as *Poppy pods* recovered from the truck.

37. So far as the recovery of the articles is concerned, P.W. 1 is the officer who intercepted the vehicle and recovered the contraband articles from such vehicle. The evidence of P.W. 1 goes to show that upon receiving a source information regarding the conveyance of contraband articles, he immediately informed the matter to his superior and, thereafter, under the instruction of such superior officer he proceeded to work out the information. In pursuance of such direction from the superior officer, P.W. 1 along with other police personnel proceeded to the place of occurrence over a national highway and intercepted the vehicle. The members of the raiding party being P.Ws. 2, 3, 4 and 5 have corroborated the statements of P.W. 1. The defence has not been able to extract anything favourable to them in the cross-examination of either of the aforesaid witnesses.

38. According to P.W. 1, when he intercepted the vehicle and detained the driver and cleaner of the vehicle, he served notice upon the detained persons informing them if they wanted to be searched in presence of a gazetted officer to which they agreed. Accordingly, the Inspector-in-Charge of English Bazar P.S. was called upon by P.W. 1 to act as a gazetted officer. P.W. 6 is the Inspector-in-Charge who acted as a gazetted officer. He has also corroborated the statement of P.W. 1 with regard to recovery of 4315 kgs. of *Poppy straw* from the vehicle. P.W. 6

has categorically stated that he went to the place of occurrence subsequent to a call from P.W. 1. He has also stated that after observing the formalities the truck with the loaded contrabands was seized in his presence as well as in presence of other witnesses. P.W. 6 has also testified that P.W. 1 took samples of *Poppy straw* and sealed and labelled the samples to which P.W. 6 signed. He proved his signatures on the seizure list as well as labels attached to the sample packets. So also the other witnesses have proved their signatures on the seizure list as well as on the labels attached to the sample packets. P.Ws. 8 and 9 are the independent witnesses. According to their statement, they were moving towards the place of occurrence and were requested by the police party to stand as a witness. They have also testified the recovery of contraband articles from the truck. In fact, one of them accompanied the truck to the weighing machine and back. It is equivocal statement of almost all the aforesaid witnesses that contraband narcotics was covered under a tarpaulin and was recovered by removing the tarpaulin.

39. Evidence on record goes to show that after the articles and the conveyance were seized by police and the accused persons were arrested, they were brought to the police station. The sealed packets were deposited with the Malkhana of the police station. The sample

packets contained 50 gms. each of the contraband recovered from the truck. The investigating officer (P.W. 10) sent the sample packets to CFSL for chemical examination and, thereafter, he also collected the report which has been admitted in evidence. Exhibit-11 is the report submitted by the CFSL.

40. The result of examination given by the CFSL in the form of report states that:-

- a) The plant product contained each of the exhibit marked here as Chem 19/17/A and Chem 19/17/B identified as opium poppy capsule;
- b) The opium alkaloids namely (i) Morphine (ii) Codeine (iii) Thebaine (iv) Papaverine and (v) Noscapine were detected in the content of each of the exhibit.

41. The report also indicates that the two packets containing the remnants in the sample weighing 35.7 gms. and 36.8 gms. were returned under proper seal and cover. Therefore, Exhibit-11 goes to establish that the articles seized from the truck were contrabands under the provisions of NDPS Act.

42. We have noted hereinbefore that the contraband articles were recovered from the truck bearing registration No. UP25-AT/8776 and the appellant was the driver of the said vehicle. The investigating officer

(P.W. 10) collected the documents with regard to the seized truck which has been admitted in evidence. Exhibit-13 is the document issued by Transport Department of Uttar Pradesh. Exhibit-13 shows that the appellant is the owner of the vehicle from which huge quantity of contraband *Poppy pods* were recovered.

43. The aforesaid circumstance goes to show that the appellant being the owner as well as the driver of the offending vehicle bearing registration No. UP25-AT/8776 carrying contraband *Poppy pods* in contravention of the provision of the NDPS Act. The articles recovered from the possession of the appellant were found, on chemical examination, to be contrabands as defined under the provisions of NDPS Act.

44. As regards the contention of the learned Advocate for the appellant that since the provision contained under Section 52A of the NDPS Act has not been complied, the entire trial has vitiated. The evidence on record goes to show that huge quantity of contraband articles were recovered from a truck. The officer involved in the search and seizure took out two sample packets from the entire stock of the contraband at the place of occurrence itself in presence of the witnesses. The packets were sealed and labelled. The witnesses present at the spot including the independent witnesses signed on the seizure

list as well as the labels attached to the sample packets. The sample papers were deposited with the Malkhana of the police station. The investigating officer of the case collected the samples from the Malkhana and sent it to the CFSL for chemical examination on January 24, 2017. The trend of cross-examination of the prosecution witnesses as well as the examination of accused under Section 313 of the Code of Criminal Procedure does not disclose any objection with regard to the veracity of the sample sent for chemical examination. In the case of **Mohammed Khalid** (supra) the Hon'ble Supreme Court discarded the reports submitted by the CFSL in consideration of the fact that proceeding under Section 52A of the NDPS Act were not undertaken by the investigating officer. In the facts of the said case, the accused were not arrested from the spot. The Hon'ble Court also noted that it was not the case of the prosecution that the accused were found in possession of *ganja*. The Hon'ble Supreme Court observed to the following:-

“26. Admittedly, no proceedings under Section 52-A of the NDPS Act were undertaken by the investigating officer PW 5 for preparing an inventory and obtaining samples in the presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Ext. P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot.

27. The offence under Section 20(b)(ii)(C) deals with production, manufacture, possession, sale, purchase, transport, import or export of cannabis. It is not the case of the prosecution that the accused A-3 and A-4 were found in possession of ganja. The highest case of the prosecution which too is not substantiated by any admissible or tangible evidence is that these two accused had conspired sale/purchase of ganja with A-1 and A-2. The entire case of the prosecution as against these two accused is based on the interrogation notes of A-1 and A-2.

28. It is trite that confession of an accused recorded by a police officer is not admissible in evidence as the same is hit by Section 25 of the Evidence Act. Neither the trial court nor the High Court adverted to this fatal flaw in the prosecution case and proceeded to convict A-3 and A-4 in a sheerly mechanical manner without there being on iota of evidence on record of the case so as to hold them guilty.”

45. However, in the facts of the case at hand, the convict was arrested with the contraband articles. He was the driver of the vehicle carrying the contraband. In fact, he was the owner of the said vehicle. Huge quantity of contraband *Poppy pods* was recovered from the conscious possession of the appellant. Not only that, the seized truck as well as the seized contraband articles were produced at the trial, and identified and admitted at the trial as material exhibits. The appellant was very much present when the recovery was made from his

possession. There is nothing on record that the seized articles were sought to be proved with the help of secondary evidence.

46. For the aforesaid reasons, we find no ground to interfere with the impugned judgment and order of sentence. Accordingly, the criminal appeal being **CRA 538 of 2019** is hereby dismissed, however, without any order as to costs and thus, disposed of.

47. In view of the disposal of the appeal, connected application being CRAN 2 of 2024 stands disposed of.

48. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

49. I agree.

[DEBANGSU BASAK, J.]