WEB COPY

Order QR

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on : 08.09.2026

Pronounced on : 30.10.2026

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.404 of 2018

Rohit Bala Subramaniam ... Appellant / Accused No.1

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 90. ... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for records in C.C.No.36 of 2015, on the file of the 1st Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, and to set aside the judgment and order of conviction and sentence dated 31.05.2018 passed against the appellant

For Appellant : Mr.Anand Grover,
Sr.Counsel
For M/s.Ojas Law Firm

For Respondent : Mr.N.P.Kumar,
Spl.Public Prosecutor

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

This Criminal Appeal is preferred under Section 374(2) of the Code of Criminal Procedure by the first accused in C.C.No.36 of 2015 on the file of the I Additional Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai ("the Trial Court"), challenging the judgment dated 31.05.2018.

2. The learned Judge, 1st Additional Special Court for Exclusive Trial of Cases under the NDPS Act, found the Appellant/A1 found guilty of the offences punishable under Section 8(c) read with Sections 29, 21(a), 22(c), 27A and 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") and imposed the following sentences:-

S.NO	OFFENCE	SENTENCE
01	21(a)	Rigorous imprisonment for **1 year**
02.	Section 29	Rigorous imprisonment for **10 years** and fine of ₹**1,00,000**; in default of payment of fine, rigorous imprisonment for **1 year**
03	Section 22(c)	Rigorous imprisonment for **10 years** and fine of ₹**1,00,000**; in default of payment of fine, rigorous imprisonment for **1 year**
04	ection 27A	Rigorous imprisonment for **10 years** and fine of ₹**1,00,000**; in default of payment of fine, rigorous imprisonment for **1 year**
05	Section 28	Rigorous imprisonment for **10 years** and fine of ₹**1,00,000**; in default of payment of fine, rigorous imprisonment for **1 year**

https://www.mhc.tn.gov.in/judis

WEB COPY

3. The sentences were ordered to run concurrently and the period of detention already undergone ordered to be set off under Section 428 Cr.P.C.

4. In this case, one Roshan Nair / A2, convicted in the same judgment. Though A2 filed an appeal in Crl.A.No.465 of 2018, the same was dismissed as withdrawn on 07.01.2026, since A2 already undergo the period of sentence imposed on him.

5. The appellant is referred to as “A1” or “the appellant” and the respondent as “NCB” or “the complainant”.

6. The case of the prosecution, as set out in the complaint (Ex.P48) and spoken to by the witnesses, is briefly as follows:

(a) On 10.02.2015, at about 08.00 a.m., PW1 / Mr.Sheelbhadra Samrat / Intelligence Officer, NCB, Chennai, received information over office telephone that one Rohit Balasubramaniam, aged about 23, staying at Block T, Door No.205, Abode Valley Phase 3, 54 Kakkan Street, Kattankulathur, Potheri, selling LSD and cocaine among college students, if he and his house checked thoroughly, the said narcotic drugs could be seized. PW1 reduced the information into writing in English in his own handwriting, typed it (Ex.P1) and submitted it to PW2 / Superintendent, at 08.10 a.m., who directed him to take necessary action.

https://www.mhc.tn.gov.in/judis

WEB COPY

(b) PW1, along with a team of NCB officers and two independent witnesses, N.Kumar and S.Kumar (PW4), went to the flat. According to PW1, when he knocked, A1 opened the door; PW1 introduced himself and his team, informed A1 of the information and of his right under Section 50 of the Act to be searched before a Gazetted Officer or a Magistrate, which A1 declined. On questioned, A1 informed that he had LSD and cocaine, produced two covers, one containing half-white powder and the other white and multi-coloured papers. The powder tested with a field kit, answered positive for cocaine, weighed two grams, sealed with NCB seal No.11 and marked S1. The papers cntained 78 blots weighing one gram, sealed and marked S2. The Flat had three bedrooms; A1 informed, he occupied one and his friends occupied other two. Rs.40,000/- and a rental agreement recovered from A1’s room, a PAN card and a driving licence from him. His Samsung Mobile phone seized. The mahazar (Ex.P2) and the test memo (Ex.P3) prepared on the spot and the proceedings concluded at about 02.00 p.m.

(c) A1 accompanied the officers to the NCB office, where a statement (Ex.P5) recorded under Section 67 of the Act. In it he is said to have named 'A2', as the person from whom he purchased LSD and an unnamed Nigerian National, as the source of cocaine. PW1 recorded this information (Ex.P6) at about 06.10 p.m. and submitted it to PW2. At about 07.20 p.m., a team conducted search of Room

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

No.204, Sri Venkateswara Residency, Tharamani, occupied by A2, the presence of PW6 and PW7, and recovered three sheets of blotter paper contain 900, 900 and 720 blots, weighing about 30 grams.

(d) A1 arrested at 10.45 p.m. On 10.02.2015, both the accused produced before the learned Judicial Magistrate, Ambattur, on 11.02.2015 and remanded. The seized articles deposited in the NCB godown by PW2 on the night of 11/12.02.2015 and a report under Section 57 of the Act (Ex.P23) sent. On 13.02.2015, on the letter of the Trial Court (Ex.P26), samples marked S1, S2, S3, S5 and S7, forwarded to the Customs House Laboratory, Chennai. The laboratory report (Ex.P29) dated 20.04.2015 confirm, S1 answers the tests for cocaine and S2, S3, S5 and S7 answer the tests for LSD. The remnant samples and the report collected by PW5 on 23.04.2015 and deposited in the Trial Court. The second samples of A2 (S4, S6, S8) forwarded to CFSL, Hyderabad returned (Ex.P47). Call detail records of two mobile numbers obtained from Vodafone (Ex.P45 series) and, on completion of investigation, complaint filed on 21.07.2015.

7. Charges framed against A1 under Section 8(c) read with Sections 29, 21(a), 22(c), 27A and 28 of the NDPS Act. A1 pleaded not guilty. The prosecution examined seven witnesses, namely, PW1 (seizing officer), PW2 (Superintendent), PW3 (Assistant Chemical Examiner, Customs House Laboratory), PW4 (postman, the independent witness to the search at A1's flat), PW5 (Investigating

https://www.mhc.tn.gov.in/judis

WEB COPY

Officer), and PW6 and PW7 (independent witnesses to the search A2's room); marked Exs.P1 to P49 and M.O.1 to M.O.11. The second independent witness to the search at A1's flat, N.Kumar, was not examined. When questioned under Section 313(1)(b) Cr.P.C., the accused denied the circumstances and pleaded false implication. No defence witness examined. Both the accused filed petitions retracting their statements recorded under Section 67 of the Act, the first on 15.06.2016, and A1 filed two further petitions on 01.11.2016 and 01.03.2017.

8. The Trial Court framed five questions: whether the seized substances were cocaine and LSD; whether they were in the possession of the accused; whether the mandatory provisions were complied with; whether the prosecution had proved its case beyond reasonable doubt; and whether the accused had discharged their burden. It answered all of them against the accused. In substance, it (i) accepted the report Ex.P29, as admissible under Section 293 Cr.P.C. and held that the quantity of LSD recovered from A1 two grams, a commercial quantity, cocaine a small quantity; (ii) accepted the evidence of PW1 as corroborated by PW4, through his statement Ex.P31 and, as regards A2, by PW6 and PW7; (iii) held the statements of A1 and A2 under Section 67 (Exs.P5 and P14) to be voluntary, treated the retractions as an afterthought, and held that they could form the basis of conviction, relying on ***Kanhaiyalal v. Union of***

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

India and Ram Singh v. Central Bureau of Narcotics; (iv) he possession to be "conscious possession" and invoked Sections 35, 54 and 66 of the NDPS Act and Section 106 of the Evidence Act to cast the burden on the accused; and (v) held that all mandatory provisions complied with. Taking note that the accused were young, prosecution not proved their connection with offenders involved in trafficking, no circumstance under Section 32-B shown, the Trial Court imposed the minimum sentence.

9. The appellant was in custody from 10.02.2015 until 15.09.2020, a period of about five years and seven months, when this Court suspended the sentence and granted him bail in Crl.M.P.No.5039 of 2020. The Special Leave Petition (Crl.) No.1024 of 2021 filed by the NCB against the order dismissed by the Hon'ble Supreme Court on 05.08.2021. The appeal now taken up for final hearing.

10. Mr.Anand Grover, learned Senior Counsel for the appellant, submitted that the prosecution case founded on prior information that narcotic drugs kept in private premises, accordingly, Section 42 of the NDPS Act was attracted. PW1 admittedly reduced the information into writing in his own handwriting, but the original record not produced before the Court. He could give reasons and admitted that it had not been shown to his superior officer. The

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

document placed before PW2 was a typed note (Ex.P1), which PW admitted was 'a combination of what is informed by the informant and added by me' and was 'not the verbatim reproduction' of the informant's statement. PW1 contradicts himself on whether he informed PW2 of the handwritten note; PW2 confirms PW1 never informed him. PW1 asserted that it is "not necessary" under Section 42(2) to submit the original information and its copy to the superior, and both PW1 and PW2 were unaware of any information register. Section 42(2) requires the copy forwarded to the immediate superior officer to correspond to the information recorded under Section 42(1), as explained in **State of Rajasthan v. Jag Raj Singh @ Hansa, (2016) 11 SCC 687** and in ***Kishan Chand v. State of Haryana, (2013) 2 SCC 502***, the Hon'ble Supreme Court emphasised strict compliance with Section 42 and held that the doctrine of substantial compliance could not excuse the failure established on the facts of that case. The learned Senior Counsel for appellant further relied on ***Prasun Chakraborty v. Narcotic Control Bureau (Calcutta High Court, 2019), Intelligence Officer, NCB v. P. Balakrishnan @ Krishna @ Balan @ Rajan, Crl.A. No. 71 of 2009***, decided on 27.02.2017 (Karnataka High Court), and ***State of Rajasthan v. Babu Lal, (2009) 14 SCC 215***, in support of his contention that the failure to produce the original record and other evidence of compliance materially undermined the prosecution case. The appellant further relied on ***State of Punjab v. Balbir Singh, (1994) 3 SCC 299,*** and ***Karnail Singh v. State of***

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

Haryana, (2009) 8 SCC 539, in support of the contention that to non-compliance with the mandatory requirements of Section 42 adversely affects the prosecution case. The appellant further submitted that the respondent's characterisation of the additions to Ex.P1 as 'minor' was unsupported by evidence, since PW1 not specified what information he added to the informant's version.

11. The learned Senior Counsel further submitted that Mahazar (Ex.P2) and test memo (Ex.P3), typed on the spot at the time of seizure, bear the file number "N.C.B.F.No.48/1/1/2015/NCB-MDS". PW1 denies having allotted a file number and does not know, how a file number could appear on documents drawn before the case registered. This shakes the foundation of the prosecution case ***(K.Kalyani v. State, Madras High Court, Crl.A.No.687 of 2012, dated 12.03.2019.*** It is the further submission of learned Senior Counsel that PW4, the independent witness examined, not supported the prosecution case. He deposed that the officers took something from inside the room, not aware what it was. He neither identified the appellant or the contraband nor acknowledged his signature on the mahazar. The Trial Court, however, disregarded his testimony in Court and relied upon his earlier statement (Ex.P31), recorded under Section 67 of the NDPS Act, without confronting him with the relevant portions thereof in the manner prescribed by Section 145 of the Evidence Act. It is his further submission that Ex.P31 could not

https://www.mhc.tn.gov.in/judis

WEB COPY

Order QR

be treated as substantive evidence and relied upon **Tofan Singh State of Tamil Nadu**, subject to the distinction between a confessional statement made by an accused and a statement made by an independent witness. He further relied upon ***State of Haryana v. Gurdial Singh, (1974) 4 SCC 494***, to contend that material inconsistencies between the evidence given in Court and an earlier statement undermine the prosecution case.

12. The learned Senior Counsel further submitted that the other independent witness, though summoned under Ex.P43, not examined, and no satisfactory explanation offered for his non-examination. The Trial Court observed that serious efforts not made to secure his attendance. The members of the raiding team were neither identified by name nor examined. Neither PW1 nor PW4 identified the appellant in Court, relying upon ***Gopal Singh v. State of Uttarakhand, 2025 INSC 263***. He submitted that the uncorroborated testimony of PW1, an official witness, insufficient to sustain the conviction, particularly in view of the contradiction between PW1 and PW2 as to whether the Superintendent accompanied the raid at A2's premises. In support of this submission, he relied upon ***Union of India v. Leen Martin, (2018) 4 SCC 490; Bahadur Singh v. State of Madhya Pradesh, (2002) 1 SCC 606; N. Raju v. State, 2014 SCC OnLine Mad 8393; and Mohammad Burhan v. Directorate of Revenue Intelligence, 2017 SCC***

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

OnLine Del 10060. Further, the flat had three rooms and the rent agreement names three tenants, none of them, nor the landlord or any neighbour, examined. The agreement is a photocopy, the original not seized, and document was in force only till 18.12.2014 ie., two months before the search. No belongings of the appellant recovered from the flat and PW1 not remembered any sign of occupation. It must be proved by independent evidence that the accused was in exclusive possession of the premises and was conscious possessions of the contraband.

13. Learned Senior Counsel further submitted that no application made to the jurisdictional Magistrate for certification of the inventory, taking photographs of the seized substances, or drawing and certifying representative samples in accordance with Section 52A. The only document produced before the learned Magistrate, Ambattur, on 11.02.2015 was a list of properties filed along with the remand application (Ex.P20). The procedure prescribed under Standing Orders Nos. 1/88 and 1/89, including the requirement of drawing representative samples in duplicate, had not been followed, and PW1 was unaware of the relevant Standing Orders. The entire seized quantities of S1 and S2 were allegedly sent to the laboratory as samples, without satisfactory proof and chain of custody that representative samples drawn in accordance with the prescribed procedure. Relying upon ***Surepally Srinivas v. State of***

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

Andhra Pradesh, 2025 INSC 414, and Nadeem Ahamed v. Sta of West Bengal, 2025 INSC 993, learned Senior Counsel contended that the cumulative procedural lapses undermined the integrity of the seizure and sampling process and rendered the prosecution's reliance on the forensic report unreliable. There is no impression of the specimen seal on the mahazar or the forwarding memo (Ex.P21). The seized articles remained untraced from 02.00 p.m. on 10.02.2015 until they deposited in the godown at midnight on 11/12.02.2015, godown register, seal movement register and any documentary proof of custody of seal No.11 not produced. PW1 sealed S2 as one gram of LSD (78 blots) and S1 as two grams of cocaine, but PW3 records S1 at 2.62 grams and S2 at 2.0 grams; the difference cannot be explained by the weight of a thin plastic pouch.

14. It is his further contention that Ex.P29 is cryptic. It records only that “chemical analysis and thin layer chromatography analysis were conducted” without giving any test data or result. PW3 admits that this was her first case of LSD, the test done was TLC, working sheet not brought to Court or given to NCB, she has not counted the blots or remember how many she tested, and she not weighed the samples without the pouch. The UN Recommended Methods require at least two uncorrelated parameters to establish identity, and analysis of at least 50% of the blots. A report which does not disclose the scientific tests and their results has no probative value ***(Mahmad***

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

Hanif Shaikh Ibrahim v. State of Gujarat, 1994 SCC OnLi Guj 293; The Trial Court erred in holding that the accused should have sought a re-test, as the burden is on the prosecution. The prosecution case itself is that one gram of LSD seized from A1. The Trial Court, on the footing that PW3 used a "melter scale" and PW1 an electronic scale, held the quantity to be two grams, thereby going beyond the prosecution case.

15. The learned Senior Counsel further contended that after ***Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1, NCB*** officers being police officers, statements under Section 67 are barred by Section 25 of the Evidence Act and cannot be used to convict. The Trial Court relied on them at almost every stage of its judgment. There is no evidence whatsoever of financing, attempt or conspiracy; the Trial Court did not even frame a point on them, gave no reasons, and by itself found that the prosecution not proved the accused to be in actual connection with offenders involved in trafficking. Financing under Section 27A is distinct from sale and purchase (*Ashraf v. State of Kerala*, 2009 SCC OnLine Ker 6502).) The learned Senior Counsel did not press the ground of violation of Section 50 of the NDPS Act, since the alleged contraband was recovered from a room and not from the appellant's person. The appellant, in any event, disputed the seizure *per se*. At the time of his arrest, the appellant was a final-year student of Chemical Engineering and that, after released on

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

bail, he completed his degree and cleared the entrance examinati for the three-year LL.B. course (AP LAWCET 2024). In these circumstances, it was contended that no useful purpose would be served by sending him back to prison.

16. Per contra, Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent, while supporting the judgment of the Trial Court, submitted that recovery of cocaine and LSD from A1 stood proved by the testimony of PW1, corroborated by PW4 through his statement (Ex.P31) and by the statement of A1. The additions found in the typed note (Ex.P1) were minor in nature and that there had been substantial compliance with Section 42 of the NDPS Act. The safeguards under Section 50 complied with and, in any event, the alleged recovery from a room and not from the person of the accused. The testimony of official witnesses could sustain a conviction even where an independent witness turned hostile or not examined. The Chemical Examiner's report admissible in evidence under Section 293 Cr.P.C. and the accused not sought re-testing or re-sampling of the seized substances. According to him, the discrepancy in the weight of the seized substances could be explained by the use of different weighing instruments, namely, the electronic balance used by PW1 and the Mettler balance used by PW3.

17. The learned Special Public Prosecutor further contended

https://www.mhc.tn.gov.in/judis

WEB COPY

that once possession established, the presumptions under Sectio 35 and 54 of the NDPS Act, Section 66 of the said Act, and Section 106 of the Indian Evidence Act comes into play, and the accused failed to rebut the same. In support of his submissions, the learned Special Public Prosecutor relied upon the following decisions, *Vijaysinh Chandubha Jadeja v. State of Gujarat* ((2011) 1 SCC 609); *State of Punjab v. Baljinder Singh* (2019); *Surinder Kumar v. State of Punjab* ((2020) 2 SCC 563); *Jeet Ram v. Narcotics Control Bureau, Chandigarh* (2020); *Than Kunwar v. State of Haryana* ((2020) 5 SCC 260); *Dayalu Kashyap* (2022 LiveLaw (SC) 100); *Kallu Khan v. State of Rajasthan* ((2021) 8 SCC 735); *Varinder Kumar v. State of Himachal Pradesh* (2019); *Pattu Lal* (1996); *Sushil Kumar Tiwari v. Hare Ram Sah* (2025); *Dharampal Singh v. State of Punjab* (2010); *Baldev Singh v. State of Haryana* ((2015) 17 SCC 554); *Baljinder Singh @ Ladoo v. State of Punjab* (2024); *Rakesh Kumar Raghuvanshi v. State of Madhya Pradesh* (2025); *Y.S. Nataraja v. State of Karnataka* (2025); and *Bharat Aambale v. State of Chhattisgarh* ((2025) 8 SCC 452).

18**.** The Court heard the submissioins made by both sides and perused the typed set, depositions, exhibits and the judgment under appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY

19. The points that arise for consideration before this Court, are;

(1) Whether the search and seizure at the flat of the appellant stands vitiated for non-compliance of Section 42 of the NDPS Act;

(2) Whether the prosecution proved its case, by reliable evidence, recovery of contraband from the possession of the appellant;

(3) Whether, in the absence of the procedure under Section 52A of the Act, and in view of the discrepancies in the physical evidence, the prosecution has proved that what was seized is what was tested and produced in Court;

(4) Whether the report of the Chemical Examiner (Ex.P29) can be relied upon to prove the character of the substances;

(5) Whether the statements recorded under Section 67 of the Act can be relied upon against the appellant; and

(6) Whether the conviction under Sections 27A, 28 and 29 of the Act can be sustained, and the overall conclusion.

20. This is a statutory appeal against conviction, and this Court is therefore bound to re-appreciate the entire evidence and arrive at its own conclusions. The NDPS Act is a stringent statute. It reverses the burden of proof in certain respects (Sections 35 and 54),

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

prescribes high minimum sentences and restricts bail. It is for th very reason that its procedural safeguards, which are meant to guard against false implication, planting and manipulation of seized material, have to be strictly scrutinised. The presumptions under Sections 35 and 54 not a substitute for proof; they arise only when the prosecution first establishes, by reliable evidence, the foundational fact that contraband was recovered from the accused. As the Hon'ble Supreme Court put it in ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh (2022 LiveLaw (SC) 724),*** to raise the presumption under Section 54 it must first be established that a recovery was made from the accused, and the moment a doubt is cast on the most fundamental aspect, namely the search and seizure, the accused is entitled to its benefit.

21. Section 42(1) of the Act provides that where an officer empowered under the section has reason to believe, from personal knowledge or from information given by any person and *taken down in writing*, that narcotic drugs or psychotropic substances are kept or concealed in any building, he may enter and search it between sunrise and sunset. Section 42(2) requires that where an officer takes down any information in writing under sub-section (1), he shall within seventy-two hours send a *copy thereof* to his immediate official superior. The Constitution Bench in ***Karnail Singh v. State of Haryana ((2009) 8 SCC 539)***, after considering ***State of Punjab v.***

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

Balbir Singh ((1994) 3 SCC 299), explained the position substance as follows: the information should ordinarily be taken down in writing and a copy sent to the superior before the officer acts on it; in emergent situations, where delay might result in escape of the accused or the loss of evidence, recording and reporting may follow soon after, with a satisfactory explanation; total non-compliance with sub-sections (1) and (2) is impermissible, delayed compliance with a satisfactory explanation is acceptable; and if the officer had sufficient time and was not in an emergent situation, the failure to record the information or to send a copy to the superior is a suspicious circumstance. The Constitution Bench thus accepted that compliance need not be a ritual, but it did not dispense with the core of the provision, namely, that the information actually received is reduced into writing and a copy of that very record reaches the superior, so that the superior and the Court can later verify that the action was based on genuine prior information.

22**.** Tested against this standard, the evidence of the prosecution itself discloses the following:

(a) PW1 was in the office when call came at about 08.00 a.m. There was no emergency. By his own admission, the time gap between recording the information and leaving for raid was two hours and twenty minutes, and the journey took about an hour. There was ample time to follow the procedure in letter and spirit and even to approach for a warrant or authorisation.

https://www.mhc.tn.gov.in/judis

WEB COPY

(b) PW1 says he first recorded the information in his own handwriting and then typed it (Ex.P1). Ex.P1 itself contains recital that "the above information was received, reduced to writing in my own handwriting, and read over to the informant, who accepted it as correct."

(c) In cross-examination PW1 deposed: "I recorded the information in pen. I don't remember what happened to the information written by me in pen. I can't produce the information written by me in the Court. I have not shown that document to my immediate superior till today. The document was meant for my personal use and hence I did not produce the document." He added that he accepts that Ex.P1 "is the combination of what is informed by the informant and added by me" and that "it is true that Ex.P1 is not the verbatim re-production of what is stated by the informant". He never deposed what he added. He further deposed, in answer to a question under Section 42(2), that it is "not necessary" to submit the original information and its copy to the immediate superior in NDPS complaints.

(d) PW1 gave contradictory versions on whether he told PW2 about the handwritten note. First he deposed that he had not shown the handwritten document to his superior, and later deposed that after typing he informed the Superintendent about the writing and the typing. PW2, on the other hand, deposed categorically that PW1

https://www.mhc.tn.gov.in/judis

WEB COPY

Order QR

not informed him that he originally recorded the information in h own handwriting, and that no copy other than Ex.P1 given to him.

(e) Both PW1 and PW2 admitted that no information register is maintained in the office. PW2 gave no outward number to Ex.P1 and wrote neither his name nor the time below his signature, though he says that Ex.P1 was placed before him at 08.10 a.m. He accepted that the NCB Form-1 format given in the Drug Law Enforcement Field Officer's Handbook differs from Ex.P1, that Ex.P1 was not given to him in a sealed envelope, and that the guidelines in the Handbook were followed only in part because "some were not practicable". PW1 professed no knowledge of the guidelines.

(f) PW1 deposed in chief that he left for the address with the team at about 09.00 a.m., whereas the "time gap" he admitted in cross-examination would take the departure to about 10.30 a.m.

23. The purpose of Section 42 is not served by mere existence of a typed note bearing a time and an endorsement. What the Law requires is a contemporaneous record of the information as received, and a copy of *that* record in the hands of a senior officer, so that no one can later alter, add to or antedate the information to justify a search already conducted or planned. In this case the only document that reached the superior was a typed note, authored by the very officer who conducted the search, which he admits was not a verbatim record of what the informant informed and into which he

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

introduced matter of his own. The original record not sent to PW and, according to PW1, has been lost or is not with him; it was not produced before the Trial Court. A copy of something which the officer cannot produce, and which was never sent, is not a copy at all. The submission that the "additions are minor" is a submission of Special Prosecutor; PW1 has not said what he added, and the Court is left to guess what the informant actually said. The statement of PW1 that it is not necessary to send the original information or a copy to the superior shows a misconception of the provision and not compliance with it.

24. This is not a case of delayed compliance accompanied by a satisfactory explanation (the position the Constitution Bench accepted), nor of a minor variance in the time of sending. It is a case where the prosecution unable to prove that the information as received taken down in writing, sent to the superior at all, in a situation where the officer had enough time to do so. In terms of *Karnail Singh* itself that is a suspicious circumstance, and it goes to the root of the matter, as the search and seizure at A1's flat is based entirely on that information. The decisions of Hon'ble Supreme Court in ***State of Rajasthan v. Jagraj Singh ((2016) 11 SCC 687***, reiterate that the information recorded and the copy sent to the superior must correspond, and that the officer must show compliance with the safeguard. Learned counsel for the respondent relied on the

https://www.mhc.tn.gov.in/judis

WEB COPY

principle of substantial compliance. That principle presupposes th the core of the provision has been complied with and is proved by evidence. Here, even the core is not established.

25. I therefore hold that the prosecution has failed to prove compliance with Section 42(1) and (2) of the NDPS Act. In the circumstances, the search at the flat of the appellant, which undertaken on prior information, is vitiated, and in any event the evidence relating to it can only be received with great caution. As will be seen below, the other infirmities in the prosecution case independently lead to the same result. Point No.1 is answered accordingly.

26. The prosecution case is that, when questioned as to whether he was in possession of any narcotic drugs, A1 stated that he had LSD and cocaine and produced two covers. However, a statement of this nature, made by an accused to an officer of the Narcotics Control Bureau (NCB), who is a police officer for the purposes of the NDPS Act, cannot, by itself, be relied upon as a confessional statement against him. The prosecution must, therefore, establish through independent and reliable evidence that the contraband in fact found in the possession of and recovered from A1. Before the Trial Court, the prosecution relied upon the testimony of PW1, the earlier statement of PW4 (Ex.P31), and the statement of A1 recorded under Section 67 of the NDPS Act (Ex.P5).

https://www.mhc.tn.gov.in/judis

WEB COPY

27. *PW4* , a Postman, examined as an independent witness to the search at the flat. His deposition is in Tamil. He deposed that about two years earlier, on the 10th of a month, after delivering a post to Rohit Balasubramaniam at Abode Valley, he came out and found four or five persons standing there, who said that they were from the narcotic drugs control and that the parcel which he delivered and the room had to be searched and that he should be a witness; that he first said that he could not, and then, on their showing identity cards, agreed to be a witness; that thereafter they took something from inside, he did not know what, and then told him that he could go, and he left for delivery. The learned Special Public Prosecutor then showed him a statement of the complaint and asked whether it was voluntary statement given by him, and he answered "yes". That statement marked as Ex.P31. Thereafter the matter adjourned for cross-examination on the request of the learned counsel for A1.

28. It is evident that PW4 does not speak to any of the material facts. He does not say that A1 admitted possession, that anything was produced by A1, that any powder or blots were weighed, tested, sealed or seized in his presence, or that a mahazar was prepared and he signed it. He says only that the officers took "something" from the room, he does not know what it was. He not identified the appellant

https://www.mhc.tn.gov.in/judis

WEB COPY

in Court, nor any of the seized articles. His version also differs frc that of PW1. PW1 says that he procured the two witnesses in a nearby street before going to the address, explained the information to them and took them to the flat. PW4 says that officers already standing outside when he came out after delivering a parcel, and he asked to witness the search of the room “and the parcel” that he delivered. The complaint (Ex.P48) goes further and narrates that, in his statement, PW4 admitted “the delivery of a big parcel to A1” and that “the parcel handed over by A1 to the complainant contained drugs”. No such parcel finds a place in the seizure narrative of PW1 or in the case property, and nobody explained about the parcel.

29. The Trial Court candidly noted that PW4 not fully supported the prosecution, but chose to rely on Ex.P31 and held that PW4 corroborated the prosecution case “to some extent”, mainly because the witness not alleged that Ex.P31 obtained by force and because the defence not put a suggestion denying that he gave it. That approach is not correct in law, for the following reasons:

(a) The substantive evidence of a witness is his deposition in Court. A statement recorded during investigation is not substantive evidence; at best it can be used to contradict the witness, in the manner provided in Section 145 of the Evidence Act, after the witness confronted with the relevant portions. In this case, the contents of Ex.P31 never put to PW4, and it marked on the strength of one word of assent to a leading question on its identity.

https://www.mhc.tn.gov.in/judis

WEB COPY

(b) Ex.P31 is a statement recorded by an officer of the NCB under Section 67 of the Act. As held in ***Tofan Singh v. State of Tamil Nadu ((2021) 4 SCC 1), NCB*** officers vested with the powers of an officer in charge of a police station are police officers and the statements made to them during investigation stand on the same footing as statements to the police. The same reasoning applies to a statement of a witness, to which Section 162 Cr.P.C. is attracted, so that it can be used for the limited purpose of contradiction.

(c) Section 53A of the NDPS Act, on which the appellant relies, makes certain statements recorded by officers during an inquiry relevant for proving the truth of the facts stated therein, but only in the situations mentioned in the section, and where the person is examined as a witness, only if the Court is of opinion that, having regard to the circumstances, the statement should be admitted in evidence in the interest of justice. The Trial Court not referred to Section 53A and recorded no such opinion. Nor could it have been justified in doing so, because to prefer an unproved earlier statement to the sworn testimony of the witness is the reverse of what the law contemplates.

(d) The question whether PW4 stated the truth in Court cannot be answered by reference to a statement which he was not confronted with. The Hon’ble Supreme Court in ***State of Haryana v.***

https://www.mhc.tn.gov.in/judis

WEB COPY

Gurdial Singh ((1974) 4 SCC 494, held that a conviction could n be sustained where witnesses gave inconsistent versions before the police and in Court. In the present case, the Trial Court did precisely the opposite by relying on the pre-trial version while disregarding the evidence given in Court. The Trial Court has in effect done opposite of this, namely adopted the pre-trial version and ignored the evidence in Court. It was also not for the accused to prove that PW4 not telling the truth in Ex.P31 and the burden of proof remained throughout on the prosecution. The finding of the Trial Court that PW4 corroborates PW1 is thus perverse, and PW4 provides no support to the case of the prosecution.

30. The other independent witness to the search at the flat, N.Kumar, S/o. Natarajan, cited as a witness in the mahazar. PW5 deposed that summons dated 19.05.2015 served on him in person (Ex.P43), but he not turned up. The prosecution not taken any steps to secure his presence and gave no explanation for not examining him. The Trial Court itself observed that he was a Government servant who could have been found had persistent steps been taken, and that serious effort not made. In addition, PW1 acted along with a team of NCB officers, who, according to his own cross-examination, helped in drawing the samples and in the search of the room. Their names and number are not recorded in the mahazar, PW1 did not identify them in his evidence, PW2 does not know who accompanied

https://www.mhc.tn.gov.in/judis

WEB COPY

PW1, and none of them examined. Thus the entire evidence relati to the search and seizure at the flat of A1 comes from PW1 alone.

31. It is well settled that the testimony of official witnesses can, by itself, sustain a conviction in an NDPS case and that non-examination of independent witnesses is not necessarily fatal to the prosecution, particularly where their non-examination is satisfactorily explained. The decisions relied upon by the Trial Court and the respondent, namely, ***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746; State of Punjab v. Nirmal Singh, (2010) 1 SCC (Cri) 561; Ram Bali v. State of U.P.; and Mahiman Singh v. State of Uttarakhand,*** recognise this principle. However, the evidence of official witnesses must still be subjected to careful and cautious scrutiny. In ***Nirmal Singh case***, the Court proceeded on the basis that the testimony of the official witnesses was free from infirmity and that no material had been brought out to discredit their evidence. The absence of independent corroboration, therefore, assumes significance when assessing the reliability of the official testimony, though it does not, by itself, render such testimony unacceptable. In the present case, two independent witnesses were associated with the seizure; one did not support the prosecution, while the other not examined, and no explanation was offered for his non-examination. In these circumstances, it becomes necessary to examine whether the testimony of PW1, considered in the light of the

https://www.mhc.tn.gov.in/judis

WEB COPY

evidence as a whole, is sufficiently reliable to sustain the conviction without independent corroboration.

32. In my considered view PW1 is not a sterile witness. Apart from the serious infirmity in the recording and reporting of the information, which has been dealt with above, the following features cast a doubt on his version:

(a) PW1 contradicted by PW2 on a material point. According to the appellant, PW1 said that PW2, a Gazetted Officer, was with him during the search of A2's premises. PW2 states in his deposition that neither he nor the Zonal Director went to the residence of A2 and that he is not aware of the recording of A2's statement; he also says he is not aware that the drugs said to have seized from A2 actually seized from him, and he does not know the names of the team members who went with PW1.

(b) His account of the timing is inconsistent, as set out in paragraph 12(f). He also did not record in the mahazar the names of the officers or the number of persons in his team and said he "did not think about that".

(c) He had not investigated an LSD case earlier. He admitted that LSD cannot be tested through a drug detection kit, and it was on the confirmation of the accused that he came to know, what he seized was LSD. The identification of the paper blots as LSD at the spot thus

https://www.mhc.tn.gov.in/judis

WEB COPY

rested on the statement of the accused himself, which is inadmissible and cannot be the basis for treating 78 blots as LSD.

(d) Neither the mahazar nor the evidence of PW1 states from which place in the Flat, A1 took out the two covers. The complaint records that the officers “found no narcotic drugs in the room” and recovered only the cash and the rental agreement. The Trial Court nevertheless proceeded on the footing, the contraband kept in a “secret place” known only to A1, and this showed conscious possession. There is no evidence of any secret place; this finding is conjecture.

(e) PW1 informed that he used NCB seal No.11 for sealing S1 and S2 and that he returned the seal to the Superintendent after the mahazar. PW2, the custodian of the seal, admits that he not maintained any register showing at what time the seal given to PW1, and PW1 had no documentary proof of having received or returned it. The same seal again used at 07.20 p.m. for the search at A2’s room. There is thus nothing to verify the custody of the seal.

(f) The Trial Court itself noted, at the conclusion of the deposition of 16.03.2017, the difficulties in recording the evidence of PW1, who answered in Hindi through a translator but able to write answers in English, and the learned Special Public Prosecutor, who knew Hindi, often intervened stating that the exact words of the witness were not being recorded. While no fault is found with the manner adopted by the Trial Court, the Court notes that the

https://www.mhc.tn.gov.in/judis

WEB COPY

testimony of the principal witness, on which the whole case res was recorded in circumstances which did not make for clarity.

33. No witness to the search at the flat of the appellant, neither PW1 nor PW4, is shown to have identified the appellant in Court as the person from whom the contraband recovered, and the learned counsel for the respondent could not point to any portion of the deposition to the contrary. The witnesses PW6 and PW7 identified A2 in the Court, and PW7 identified a photograph of A1 as the person who used to visit the room of A2; but that has no bearing on the search at A1's flat. In ***Tukesh Singh v. State of Chhattisgarh (2025 INSC 683,*** the Hon'ble Supreme Court held that identification of the accused by the witness in open Court is of utmost importance and that failure to identify the accused in Court as the person whom the witness saw is fatal to the prosecution case. That was a case of eyewitnesses to a crime, but the principle that the prosecution must connect, through the testimony of a witness in Court, the person in the dock with the act attributed to him applies equally to a seizure witness, where the accused denies the recovery. In a case where the other independent witness not examined and PW4 not supportrf the prosecution, this omission is a further infirmity in the evidence.

34. The Trial Court held that the room from which the contraband seized occupied by A1, the other two rooms locked and

https://www.mhc.tn.gov.in/judis

WEB COPY

not in joint possession, and therefore A1 alone had knowledge of t contraband. These findings are not supported by evidence. The flat had three bedrooms, a hall and kitchen. The only document linking A1 to the flat is a rental agreement recovered from it. That agreement is a photocopy, and the original not seized. Further, it had been executed for eleven months from 19.01.2014 to 18.12.2014 and expired about two months before the search; PW1 admitted that there was no agreement in force on 10.02.2015. It names three persons as tenants, A1, Mr.Vidhyanandhan and Mr.Magesh Nadar, with one Mr.Arjun Shridharan as landlord, signed on his behalf by one Meghana, whose identity is not known. None of these persons, nor any neighbour or watchman of the apartment, examined. No personal belongings or articles of daily use of A1 seized from the Flat and PW1 does not remember any signs of occupation. The mere fact that the officers found A1 in the flat, cash and a photocopy of the agreement found in a room does not establish that A1 was in exclusive possession of the entire flat, still less of the covers produced. Thus the finding of the trial Court, room was exclusively occupied by A1, not established.

35. The Trial Court sought to bridge these gaps by Section 106 of the Evidence Act and Sections 35 and 54 of the NDPS Act. It held that since the contraband handed over by A1 from a place known only to him, it was for him to explain how it came to be there, and that his failure to do so established “conscious possession”. This

https://www.mhc.tn.gov.in/judis

WEB COPY

reasoning is circuitous. Section 106 does not relieve the prosecuti of its burden of proving the facts which constitute the offence; and the presumptions under Sections 35 and 54 can only operate after the prosecution has proved, by evidence on which the Court can rely, that the contraband was found with the accused. In this case the foundational fact has not been proved, for the reasons discussed above. The question of the appellant explaining anything does not therefore arise, and the fact that he led no defence evidence is of no consequence. The Trial Court's approach overlooks that the appellant took a consistent stand, in cross-examination of the prosecution witnesses and in his examination under Section 313 Cr.P.C., that he falsely implicated.

36. The evidence of recovery of the contraband from the appellant rests on the sole testimony of PW1, who is an interested witness in the sense that he is the officer who conducted the search and launched the prosecution; whose version is not corroborated by the independent witness; who is unsupported by any other witness and is contradicted in part by PW2; and whose handling of the information, the seal and the identification of the substance leave serious doubts. I hold that the prosecution has not proved, beyond reasonable doubt, the recovery of cocaine and LSD from the possession of the appellant. Point No.2 is answered in favour of the appellant.

https://www.mhc.tn.gov.in/judis

WEB COPY

37. Before taking up the remaining points, it is necessary to note the status of NCB officers in law, which has a bearing on several of the documents in this case. A three-Judge Bench of the Hon'ble Supreme Court in ***Tofan Singh's*** *case (cited supra)* held that officers of the NCB who are invested with the powers of an officer in charge of a police station under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, and that a confessional statement recorded by them under Section 67 of the Act is inadmissible in the trial of an offence under the Act. The Bench overruled the earlier decisions (*Raj Kumar Karwal v. Union of India* and *Kanhaiyalal v. Union of India*) which had taken a contrary view. The consequences of this for the statements recorded in this case are considered under Point No.5.

38. Section 52A of the Act (as amended in 2014) provides for the disposal of seized narcotic drugs and psychotropic substances. Where such substances have been seized and forwarded to the officer in charge of the nearest police station or the officer empowered under Section 53, that officer is required to prepare an inventory of the seized goods containing such details as to description, quality, quantity, mode of packing, marks, numbers and other identifying particulars, and to make an application to any Magistrate for the purpose of (a) certifying the correctness of the inventory, or (b)

https://www.mhc.tn.gov.in/judis

WEB COPY

taking, in the presence of the Magistrate, photographs of the dru and certifying them as true, or (c) allowing to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Under sub-section (4), the inventory, photographs and list of samples so certified by the Magistrate are to be treated as primary evidence in respect of the offence. The Standing Orders issued by the Narcotics Control Bureau (Nos.1/88 and 1/89) similarly require that representative samples be drawn from the seizure, in duplicate, and sent for analysis.

39. No application was made to any Magistrate under Section 52A(2). The only document that went before the learned Magistrate, Ambattur, on 11.02.2015 was the remand application with a list of properties annexed to it. No inventory certified, no photographs taken in the presence of a Magistrate and no sample drawn in the presence of a Magistrate. PW1 not even aware of the Standing Orders. The whole of what seized from A1, that is the entire two grams of powder (S1) and the entire sheet of 78 blots (S2), not sampled but forwarded to the laboratory, on the requisition of the NCB (Ex.P25) through a letter of the Trial Court (Ex.P26) dated 13.02.2015. The Trial Court not referred to Section 52A at all. It simply observed that all mandatory provisions complied with by the NCB officers.

https://www.mhc.tn.gov.in/judis

WEB COPY

40. The Hon'ble Supreme Court has repeatedly emphasised t importance of compliance with Section 52A of the NDPS Act. In *Union of India v. Mohan Lal*, (2016) 3 SCC 379, the Court explained the statutory procedure governing the preparation and certification of inventories, photographs and representative samples. In *Mangilal v. State of Madhya Pradesh*, 2023 INSC 634, and *Yusuf @ Asif v. State*, 2023 INSC 912, the Court considered the consequences of non-compliance with the prescribed procedure in the context of the evidence relied upon to establish the identity of the seized contraband. In *Mohd. Khalid v. State of Telangana*, 2024 INSC 158, the Court held, in the circumstances of that case, that the FSL report could not be read in evidence, observing that it was "nothing but a waste paper and cannot be read in evidence", in view of the failure to undertake the proceedings contemplated under Section 52A for preparation of the inventory and drawing of samples in the presence of the jurisdictional Magistrate. The appellant also relied upon *Nadeem Ahamed v. State of West Bengal*, 2025 INSC 993, and *Surepally Srinivas v. State of Andhra Pradesh*, 2025 INSC 414, as well as the decisions of this Court in *N. Uganchand Kumawat v. Inspector of Police, NIB-CID*, *State v. Krishnaveni* and *Pandi @ Sornapandi v. Inspector of Police*. According to the appellant, these decisions support the contention that merely producing a list of properties before the Magistrate along with a remand application does not constitute compliance with Section 52A of the NDPS Act.

https://www.mhc.tn.gov.in/judis

WEB COPY

41. The respondent, on the other hand, relied upon *Bharat Aambale v. State of Chhattisgarh*, (2025) 8 SCC 452, 2025 INSC 78. In that decision, the Hon'ble Supreme Court held that mere non-compliance with Section 52A, or with the Standing Orders and Rules framed thereunder, would not, by itself, vitiate the trial. The effect of such non-compliance must be assessed in the light of the evidence and the circumstances of the case, particularly whether the deficiencies give rise to discrepancies in the physical evidence that render the prosecution case doubtful. The Court further explained that the accused must first establish the foundational facts of non-compliance on a preponderance of probabilities, relying either on defence evidence or on the prosecution evidence itself. Once that burden is discharged, the onus shifts to the prosecution to establish, beyond reasonable doubt, either substantial compliance or that the non-compliance has not affected its case. It is unnecessary, in the present case, to determine whether *Bharat Aambale* is at variance with the principles laid down in the earlier decisions. Even applying the approach enunciated in *Bharat Aambale*, the question remains whether the deficiencies established in the present case cast doubt on the identity and integrity of the seized substances and, consequently, on the prosecution's reliance upon the forensic report. As discussed below, the result is the same even on that basis.

https://www.mhc.tn.gov.in/judis

WEB COPY

42. The foundational facts of non-compliance are established by the prosecution's own evidence. The prosecution offered no explanation for non-compliance and has not shown that there was substantial compliance. On the contrary, the record discloses the following discrepancies in the physical evidence, which go to the root of the matter:

(a) According to the mahazar and the evidence of PW1, S1 (powder) weighed two grams and S2 (78 blots) weighed one gram. PW3 received S1 at 2.62 grams, with remnant at 1.60 grams, and S2 at 2.0 grams, with remnant at 1.1 grams, all along with the plastic pouch, as recorded in Ex.P29. Thus S2, one gram at the spot, was twice that at the laboratory. The explanation of the Trial Court, PW3 used a "melter" balance while PW1 used an electronic one is a surmise unsupported by any evidence; neither witness said that the balances give different readings, and the difference of a full gram on one gram is not a matter of calibration. The respondent explained the difference by the weight of pouch, but on that reasoning the pouch of S2 would have to weigh about one gram, while that of S1 would, on the same arithmetic, weigh about 0.62 gram; PW3 admitted that she did not weigh any sample without pouch, and PW1 not weighed the pouch. In ***Rajesh Jagdambha Avasthi v. State of Goa ((2005) 9 SCC 773***), the Hon'ble Supreme Court observed that where the quantity found by the analyst differs from the quantity said to have

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

been sealed and sent, the credibility of the recovery proceedings eroded and a doubt arises as to whether what was seized was really sent for examination.

(b) The whole seizure sent as the sample. Because the entire contraband sent, there was no seizure left in the custody of the Court except the remnants returned by the laboratory (M.O.1 and M.O.2). Without the inventory, photographs and certified list of samples there is no record before the Court, certified by an independent authority, of what actually seized.

(c) It is pointed out that mahazar (Ex.P2), and forwarding memo (Ex.P21), not bear the impression of the specimen seal of seal No.11 which affixed on S1 and S2, so that the Court could not verify that the articles sealed at the spot were the articles which reached the laboratory. The Trial Court recorded no finding to the contrary.

(d) The seized articles sealed at about 02.00 p.m. on 10.02.2015, taken before the Magistrate on 11.02.2015, deposited in godown by PW2 at about midnight on 11/12.02.2015. PW2 stated that he maintains a godown register in which all deposits and removals entered, but except for godown receipt, no entry from that register produced, and no seal movement register maintained. Where the articles were, and in whose custody, for about thirty-four hours not established by any document. PW2 himself not even knew the contents of the packets which he received from PW1.

(e) The remnant samples, M.O.1 to M.O.8, deposited before the

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

Trial Court on 24.04.2015. PW3, who allegedly analysed the sample not identified the articles in Court, although the sealed covers remained in the Court throughout the trial. PW5, who collected the remnants from the laboratory, deposited them in Court, failed to identify them. Neither PW1 nor PW4 identified the articles. The Trial Court not opened the sealed covers to verify their contents. The prosecution required to establish a reliable link between the substances allegedly seized from the accused, those examined in the laboratory, and those subsequently produced before the Court. The mere production of a laboratory report does not, by itself, conclusively establish that link ***(Vijay Pandey v. State of Uttar Pradesh, 2019 SCC OnLine SC 942)***. In the absence of satisfactory identification connecting the remnant samples produced in Court with the substances allegedly seized and analysed, the evidentiary link remains unestablished (***Milan Sarcanski v. State, 1997 ALL MR (Cri) 496)***.

(f) Ex.P2 (mahazar) and Ex.P3 (test memo), which PW1 deposed were typed and prepared at the spot during the search, bear the file number of the case, “N.C.B.F.No.48/1/1/2015/NCB-MDS”. PW1 denies having allotted that number and does not know who allotted it. No explanation offered as to how a file number, which would be allotted on registration of the case, appeared on documents allegedly prepared before the registration. The Hon’ble Supreme Court in ***Kamaljit Singh @ Pappu v. State of Punjab***

https://www.mhc.tn.gov.in/judis

WEB COPY

(Crl.A.No.424 of 2009, decided on 31.01.2019) found unfathomable that the FIR number could appear on seizure memos drawn up before the registration of FIR, and treated the absence of any explanation as indicative of unfairness in the investigation. This Court has acquitted accused on that account in ***K.Kalyani v. State (Crl.A.No.687 of 2012, 12.03.2019) and Rangan v. State (Crl.A.No.304 of 2013, 20.11.2017).*** The unexplained appearance of the file number in the present case cannot be ignored.

43. The prosecution thus not proved either substantial compliance with Section 52A or that non-compliance has no bearing on its case. The discrepancies in the physical evidence are exactly of the kind which, in the words of *Bharat Aambale*, "may not have been there had such compliance been done". In the circumstances, the non-compliance with Section 52A is fatal, and there is no reliable proof that what tested and produced in Court is what seized from the appellant. Point No.3 is answered accordingly.

44. Even if the question of Section 52A is put aside, the reliance placed by the Trial Court on Ex.P29 cannot be sustained. Ex.P29 says "chemical analysis and thin layer chromatography analysis" conducted. It does not describe the tests, reagents or standards used, results or the data from which the opinion is drawn. For S1 it says that the sample "answers the tests for the presence of cocaine" and for S2, S3, S5 and S7 that each "answers the tests for the presence of LSD (Lysergide)". The Hon'ble Supreme Court in

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

State of H.P. v. Jai Lal ((1999) 7 SCC 280, held that the report an expert must disclose the data on which the opinion is based and the reasons for it, so that the Court can assess it for itself; and the Gujarat High Court in *Mahmad Hanif Shaikh Ibrahim v. State of Gujarat* (1994 SCC OnLine Guj 293) held that where the scientific tests conducted and the results derived from them are not mentioned in the report, the report has no probative value, as a bare *ipse dixit* is not accepted in a criminal trial.

45. The oral evidence of PW3 does not cure this deficiency; it accentuates it. She admitted that this was her first case of testing LSD; the working sheet relating to testing is maintained in the laboratory and "only the result is shown in the report"; she did not bring the working sheet to Court and not given it to the NCB officers; she did not test the S1 sample for the level of impurity and not aware that impurity affects the accuracy of the report; not counted the number of blots, not remembered how many blots she tested in S2, and she weighed the samples along with the pouch and never without it. She is a physical chemist. She did not identify the samples in Court. She does not claim in her evidence that she applied any technique of identification other than the "chemical analysis", which is not described and thin layer chromatography, which on the appellant's case is the only test actually performed, and the Trial Court itself found that the other tests, mass spectrometry and

https://www.mhc.tn.gov.in/judis

WEB COPY

ultraviolet photometry, could not be done because the instrumen not in working condition. The Court is not called upon in this case to lay down the number of tests which will suffice in every case. It is enough to conclude that on this record the prosecution neither produced the data to show that identification done in accordance with accepted standards, nor made the working sheet available, even though the witness herself stated that it exists, and so the Court is unable to be satisfied that S2, 78 blots said to be taken from the appellant, were LSD.

46. The Trial Court brushed aside these infirmities on the following grounds: (i) the UN Manual recommends several tests and the examiner may choose any of them; (ii) the defence ought to have sought re-testing or re-sampling and, not having done so, must be presumed to have admitted the report; (iii) the report enjoys the privilege of Section 293 Cr.P.C.; and (iv) that, as held in ***Bhabani Basu v. State of Goa (Bombay High Court) and M.Veludurai v. State ((2012) 1 LW (Crl) 70),*** the entire quantity of the substance is to be taken into account and purity tests are not necessary. As to (i), the freedom of examiner to choose among the recommended tests does not relieve her of the duty to state which tests she chose and what they showed. As to (ii) and (iii), the approach is wrong in principle. Section 293 Cr.P.C. only makes the report admissible without calling the expert; it does not make it conclusive or immune

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

from scrutiny, and in this case PW3 in fact examined and h evidence discloses the defects mentioned above. The burden of proving that the substance seized is a narcotic drug or psychotropic substance lies on the prosecution throughout, and the accused cannot be presumed to have admitted the report merely because he did not seek a re-test. As to (iv), the decisions cited deal with other questions, namely, whether purity of a substance needs to be tested for deciding the quantity; and in ***Bhabani Basu's case,*** the Bombay High Court proceeded on the footing that the contraband analysed was the same as that recovered from the accused and there had been no tampering with the envelopes, which cannot be said in this case. The Trial Court also took from the manual a description of the usual form and dose of LSD and used it to fill gaps in the evidence. A passage from a manual, which not proved through any witness in relation to the sample in question, cannot be a substitute for proof.

47. The Trial Court also fell into error on the weight of LSD. The prosecution case, in mahazar, arrest memo, complaint and evidence of PW1, that one gram of LSD (78 blots) seized from A1. The Trial Court held that the weight of LSD recovered from A1 “as per the prosecution” two grams, on the strength of the weight recorded by PW3 with the pouch, and in the same breath described the cocaine seized from A1, which two grams on the prosecution case, as one gram. A court cannot improve the prosecution case by substituting a

https://www.mhc.tn.gov.in/judis

WEB COPY

weight which the prosecution does not allege, and the confusi between the two substances shows that the Trial Court not applied its mind to the facts. As the identity of the substances itself is not reliably established, this Court need not decide whether the weight of the blotting paper has to be taken into account for determining the quantity of LSD, and leaves that question open. Point No.4 is answered in favour of the appellant.

48. The Trial Court relied on the statement of A1 (Ex.P5, and the further statement Ex.P11), and on that of A2 (Ex.P14), at almost every stage of its reasoning. It held them to be voluntary, treated the retractions filed after more than a year as an afterthought, and held, following ***Kanhaiyalal and Ram Singh v. Central Bureau of Narcotics,*** that a conviction could be based on them even without corroboration. The judgment was pronounced on 31.05.2018, before ***Tofan Singh***. The law declared in ***Tofan Singh*** governs this appeal. Under it, a statement made by an accused to an NCB officer under Section 67, whether or not it is later retracted, is hit by Section 25 of the Evidence Act and is inadmissible as a confession. The reasoning of the Trial Court on voluntariness, on the delay in retraction and on the absence of any complaint against the officers is therefore beside the point, for the statements cannot be looked at against the appellant at all. Its reliance on the statement of A2 (Ex.P14) against A1 is equally impermissible; as the confession of a co-accused is a

https://www.mhc.tn.gov.in/judis

WEB COPY

statement of the same kind, it is inadmissible, and Section 30 of t Evidence Act has no application to a statement which is barred by Section 25.

49. The Trial Court reasoned that the statement of A1 stood corroborated by the recovery of 30 grams of LSD from A2 on the basis of what A1 disclosed. The recovery from A2 would at best attract Section 27 of the Evidence Act, which permits proof of only so much of the information received from an accused in custody as distinctly relates to the fact thereby discovered. The portion of Ex.P5 which led the officers to A2's room is relevant, if at all, only to the discovery of the room and of what found there. It cannot be used to prove that A1 himself possessed contraband earlier in the day, or that there was any conspiracy or financing. Nor can the remainder of statement, namely account of purchases from A2 and from an unnamed Nigerian National, of the online orders and the payments, be read into evidence on the strength of the discovery. The prosecution, moreover, did nothing to corroborate those disclosures. Nothing done about the Nigerian National, about Vishnu Thomas, whose name and address allegedly given, about the websites, the bitcoin transactions, the profile or the HDFC account, nor about any shipment on 02.02.2015 and 10.02.2015. The delivery by PW4 of a postal article is not linked to any of these. Where the substance of a statement is not investigated at all, there is no basis to treat it as truthful in any event.

https://www.mhc.tn.gov.in/judis

WEB COPY

50. The Trial Court referred to the call detail records (Ex.P45). The record before this Court discloses that the mobile number said to be used by A1 (8220306922) is identified as his number in the statement Ex.P5; the CDR obtained related to the number of A2, and PW5 admitted in cross-examination, according to the grounds of appeal, that he conducted no investigation in respect of the number attributed to A1. It is also pointed out that a call between the two numbers is shown at 18.28.35 hours on 10.02.2015, at a time when A1 was, on the prosecution's own case, in the custody of NCB officers since the conclusion of the mahazar at about 02.00 p.m., and his phone had been seized (M.O.9). The prosecution offered no explanation. Even otherwise, a record of calls between two persons is no proof of possession of contraband, or of a conspiracy. Point No.5 is answered in favour of the appellant.

51. The convictions under Sections 27A, 28 and 29 of the NDPS Act are unsustainable on an independent footing. Section 27A penalises the financing, directly or indirectly, of activities specified in the Act, as well as harbouring persons engaged in such activities. Section 28 deals with attempts to commit offences under the Act, while Section 29 deals with abetment and criminal conspiracy. A perusal of the records reveals that the Trial Court did not frame any specific point for determination in respect of these offences, and its

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

discussion of them is confined to recording the convictions under t said provisions. Significantly, the Trial Court also recorded that "the prosecution has not proved the fact that the accused are in actual connection with the offenders who are involved in trafficking". This finding is difficult to reconcile with the convictions for financing, attempt and criminal conspiracy and the sentence of ten years rigorous imprisonment on each of those counts, which was imposed without any reasons at all, cannot stand. None of the prosecution witnesses testified to any act of financing or harbouring attributable to A1. The only material relied upon in support of the allegation of financing was the reference to online purchases through Bitcoin and a bank account in the statements recorded under Section 67 of the NDPS Act. In view of *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, a confessional statement made to an officer of the NCB cannot be relied upon as substantive evidence of guilt. The prosecution has also failed to establish the alleged financing through independent and corroborative evidence. Financing illicit drug-trafficking activities under Section 27A is distinct from merely purchasing or selling a narcotic drug (*Ashraf v. State of Kerala*, 2009 SCC OnLine Ker 6502). Likewise, the prosecution not established any agreement between A1 and A2 to commit an illegal act or to commit a legal act by illegal means, as required to sustain a charge of criminal conspiracy under Section 29. Nor has it established any act constituting an attempt to commit an offence under Section 28. In the absence of evidence establishing the essential ingredients of

https://www.mhc.tn.gov.in/judis

WEB COPY

these offences, the convictions under Sections 27A, 28 and 29 of t NDPS Act, together with the sentences imposed thereunder, cannot be sustained. Point No. 6 is accordingly answered in favour of the appellant.

52. The appellant did not press the plea of non-compliance with Section 50 of the NDPS Act, as the contraband is alleged to have been recovered from a room and not from his person, and he disputes the seizure itself. The decisions cited by the respondent relating to Section 50 (including *Vijaysinh Chandubha Jadeja*, *Baldev Singh*, *Surinder Kumar*, *Varinder Kumar*, *Than Kunwar*, *Jeet Ram* and *Kallu Khan*), and those on the effect of non-examination or non-support of an independent witness, do not arise for decision, and the Court leaves the point open. The respondent's decisions on substantial compliance with Section 42 and on Section 52A have been dealt with above. None of the decisions cited by the respondent, as far as this Court is able to see, takes the view that a conviction can be sustained on the sole testimony of the seizing officer where the foundational facts of the search itself are in doubt, where the other safeguards of the Act have not been observed, and where the physical evidence is discrepant.

53. To sum up, the prosecution case in respect of the appellant suffers from the following infirmities, each of which is serious and

https://www.mhc.tn.gov.in/judis

WEB COPY

which, taken together, are fatal: (i) the information on which the NC acted not taken down and reported in the manner required by Section 42, and the original record has been withheld or lost; (ii) the search and seizure at A1's flat rests entirely on PW1, whose testimony is contradicted in important respects, uncorroborated by the only independent witness examined, and unsupported by the other witness cited and the team members, none of whom were produced; (iii) the exclusive and conscious possession of the flat and of the contraband by A1 has not been proved; (iv) there was no compliance with Section 52A, and there are material discrepancies in the weight of the samples, the seals, the custody of the articles and the identification of the case property; (v) the report of the Chemical Examiner discloses no test data and is not supported by her oral evidence; (vi) the statements under Section 67 on which the Trial Court heavily relied are inadmissible; and (vii) there is no evidence of any financing, attempt or conspiracy. The judgment under appeal was reached by shifting the burden to the accused through Sections 35, 54 and 106, without the foundational facts being established, and by ignoring the evidence of the prosecution witnesses elicited in cross-examination. Such a conclusion cannot be upheld.

54. The gravity of the offences under the NDPS Act and the concern of the legislature about the spread of drugs among the young are not lost on this Court. But the greater the gravity of the

https://www.mhc.tn.gov.in/judis

WEB COPY

offence and the severity of the punishment, the stricter must be t insistence on the safeguards which the legislature itself has provided, and the standard of proof beyond reasonable doubt cannot be diluted. The prosecution has failed to meet that standard, and the appellant is entitled to the benefit of doubt. The Court also notes, though it is not a ground of this decision, the submission that the appellant, who was a final-year engineering student at the time of his arrest, spent more than five years in custody, completed his studies after being released on bail and has since qualified for admission to a law course.

55. In the result:

(i) The Criminal Appeal is allowed.

(ii) The judgment of conviction and sentence dated 31.05.2018 passed in C.C.No.36 of 2015 by the I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, insofar as it relates to the appellant/Accused No.1, is set aside and the appellant is acquitted of the charges under Section 8(c) read with Sections 29, 21(a), 22(c), 27A and 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

(iii) The bail bond executed by the appellant, pursuant to the order dated 15.09.2020 in Crl.M.P.No.5039 of 2020 in Crl.A.No.404 of 2018, shall stand discharged, and the sureties, if any, shall stand discharged from their bonds.

https://www.mhc.tn.gov.in/judis

WEB COPY

(iv) The fine amount, if any, paid by the appellant shall be refunded to him.

30.**10.2026**

Index : Yes/No
Internet : Yes / No
mpk

To

1. The 1st Additional Special Court for Exclusive Trial of Cases under NDPS Act,
Chennai.

2.The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 90.

3. The Public Prosecutor,
High Court,
Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

M.NIRMAL KUMAR, J.

mpk

Pre-Delivery Judgment made in
CRL.A.No.404 of 2018

30.10.2026

https://www.mhc.tn.gov.in/judis