

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.515 of 2023

Arising Out of PS. Case No.-73 Year-2018 Thana- KATIHAR NAGAR District- Katihar

1. Sanjeev Dev Verma S/O- Rati Ranjan Dev Verma Village- Barahkada Ps- Sidai Mohanpur Dist- Tripura West
2. Tapas Dev Verma son of Late Ramesh Dev Verma Village- Rajendra Para Ps- Khudai, Dist- Tripura

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 539 of 2023

Arising Out of PS. Case No.-73 Year-2018 Thana- KATIHAR NAGAR District- Katihar

Sanjeet Verma @ Sanjeet Dev Verma @ Sanjit Debberma Son of Kartik Dev Verma Resident of village - Barahkadha, P.S. - Sirai (Sidai) Mohanpur, Distt. - Tripura (West), State Tripura

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 515 of 2023)

For the Appellant/s : Ms. Mira Kumari, Advocate
Ms. Ankita Roy, Advocate

For the Respondent/s : Ms. Km. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 539 of 2023)

For the Appellant/s : Ms. Mira Kumari, Advocate
Ms. Ankita Roy, Advocate

For the Respondent/s : Ms. Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 16-12-2025

Heard Ms. Mira Kumari, assisted by Ms. Ankita

Roy, learned counsel for the appellant and Ms. Km. Shashi Bala

Verma, learned Additional Public Prosecutor for the State.



2. The present appeal arises out of the judgment of conviction dated 23.02.2023 (hereinafter referred to as the '*impugned judgment*') and the order of sentence dated 27.02.2023 (in short referred to as the '*impugned order*') passed by the learned Additional Sessions Judge-III-cum Successor of Court of A.S.J.-IV, Kathihar in connection with N.D.P.S. Case No. 03 of 2018, arising out of Kathihar Town (Sahayak) P.S. Case No. 73 of 2018.

3. By the impugned judgment, the appellants namely Sanjeev Dev Verma, Tapas Dev Verma and Sanjeet Dev Verma have been convicted for the offences under Sections 20(b)(C) read with Section 25/29 of the N.D.P.S Act and have been sentenced to undergo rigorous imprisonment for 14 years for the offence under Section 20(b)(C) read with Section 25/29 of the N.D.P.S Act and also to pay a fine of Rs. 1,00,000/- each and in default of payment of fine they shall further undergo simple imprisonment for two years.

Prosecution Case:

4. The prosecution case, in brief, is that on 30.01.2018 at about 00:30 hours, officers of the Special Task Force, Patna, alerted the informant, the then S.H.O of Town (Sahavak) Police Station, regarding transportation of cannabis from Tripura to



Bihar via Katihar, allegedly being guided by occupants of a Bolero vehicle. The information was reduced into writing and information forwarded to superior officers. Two raiding teams were constituted. At about 05:00 hours, a Bolero vehicle followed by a truck was intercepted at Kolasi Petrol Pump. After compliance with the provisions of law, including service of notice under Section 50 of the N.D.P.S Act and upon refusal of all the seven apprehended accused persons, to exercise the option of search before a Magistrate or Gazetted Officer, the truck was searched in the presence of independent witnesses. During search, a huge quantity of cannabis was recovered from a concealed inbuilt chamber of the truck. Mobile phones and cash were also recovered from the occupants during personal search. The seized contraband was weighed, samples were drawn, seizure lists were prepared in presence of independent witnesses, copies were supplied to the accused persons and thereafter all the seven persons were arrested.

5. On the basis of the aforesaid written application, Katihar Town (Sahayak) P.S. Case No. 73 of 2018 dated 30.01.2018 under Sections 8/20(b)(ii)(c) 25/29 of the N.D.P.S. Act was registered.

6. After completion of investigation, the Investigating



Officer (I.O.) (P.W. 6) submitted charge-sheet being Charge-Sheet No. 189 of 2018 dated 27.07.2018 under Sections 8/20(b)(ii)(c) 25/29 of the N.D.P.S. Act.

7. On the basis of the police report, cognizance was taken vide order dated 03..08.2018 under Sections 8/20(b)(ii)(c) 25/29 of the N.D.P.S. Act against the seven apprehended accused persons including the appellants.

8. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried.

9. In course of trial, the prosecution has examined as many as thirteen witnesses and exhibited several documents to prove the prosecution case.

List of prosecution witnesses:

PW-1	Mokarrat Hussain
PW-2	Anjay Aman (informant)
PW-3	Mohan Paswan
PW-4	Nand Lal Choudhary
PW-5	Raja Kumar
PW-6	Jagdish Paswan (I.O)
PW-7	Anjan Kumar
PW-8	Sakesh Kumar
PW-9	Chulbul Kumar
PW-10	Saddam Hussain
PW-11	Md. Ajijul
PW-12	Rajesh Kumar



PW-13	Chandra Dhari Kumar
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List of Exhibits on behalf of the Prosecution

Exhibit-1	Signature of SHO upon seizure list
Exhibit-2	Signature of P.W.-2 upon written statement
Exhibit-2/a	Forwarding on self-written statement
Exhibit-2b	Signature of SHO Nirmal Kr. Yadavendu upon endorsement
Exhibit-3	Searched documents of Lalan Kumar Rai
Exhibit-3/a	Searched documents of Arun Kumar
Exhibit-3/b	Searched documents of Rakesh Kumar
Exhibit-3/c	Searched documents of Guddu Kumar
Exhibit-3/d	Searched documents of Sanjeet Dev Verma
Exhibit-3/e	Searched documents of Tapas Dev Verma
Exhibit-3/f	Searched documents of Sanjeeb Dev Verma
Exhibit-1/a	Signature of PW-10 upon seizure list
Exhibit-1/b to 1/o	Signature of PW-10 upon the papers
Exhibit-4	Signature of PW-11 upon seizure list
Exhibit-4/a to 4/n	Signature of PW-11 upon blank paper
Exhibit-5	Signature of SHO Sahayak PS upon seizure list
Exhibit-6	FSL Report



Findings of the learned Trial Court

10. The learned trial court, after discussing the evidences of the prosecution witnesses and taking into account the exhibits, first held that there is no doubt that the instant case is based on the principle of *reverse onus* and the initial burden to prove the case is on the prosecution to establish beyond all reasonable doubt, the basic or pretext facts covered by the term *actus reus*. It has gone on to hold that, in the facts and circumstances of the present case, the information with regard to a truck carrying narcotics was reduced into writing by the informant, however, the same was not produced before the court, but as per the written report and the evidences led on behalf of the prosecution, it would be clear that two teams were constituted and at the place of occurrence suspected truck was escorted by a Bolero vehicle and the same was intercepted and a total of 644.5 kg of narcotic substance was recovered from a hidden box/compartment built behind the driver's seat. The learned Trial Court has held that, notices under Section 50 of the N.D.P.S. Act were duly served and a huge quantity of cannabis was recovered from the truck. However, the non-production of the seized cannabis in the court was not held to be fatal to the



prosecution case. The learned Trial Court has observed that search and seizure of the vehicle and confiscation of the seized goods is not challenged by the defense. It has been held that the witnesses who did not support the prosecution case have not given any contrary evidence so far as the fact regarding recovery of those packets from the vehicle are concerned. It has been held that though there is slight variation in the deposition of P.Ws, yet their evidences are found reliable and trustworthy, so far as the recovery of 110 packets, which were kept hidden inside the box built behind the driver's seat is concerned and during the cross-examination, the defence has failed to bring any material to dislodge the evidence of these witnesses regarding the search, recovery and seizure of 110 packets of cannabis from the truck.

11. On the point as to whether the recovery of total 110 packets containing narcotics from the truck would amount to conscious possession of the accused persons, it has been held that there is no denial and challenge to the fact that on that fateful day the present three accused appellants were occupants of the above referred truck while the other accused were passengers of the intercepted Bolero vehicle. The learned Trial Court, after referring to a few judgments of the Hon'ble



Supreme Court has gone on to hold that there being no explanation as to how those packets came to be concealed in the vehicle in which the appellants were travelling without their knowledge, the conclusion of culpable mental state on the part of the appellants is but inevitable.

12. The learned Trial Court has taken note of the fact that no evidence in support of their plea of false implication was brought on record by the said accused persons and no explanation as to the circumstances under which the packets were found inside the vehicle which was in their possession has been seen to be forthcoming. The learned Trial Court lastly has held that the appellants are residents of Tripura and were apprehended at Katihar and no explanation was provided by them as to why they had assembled in the above mentioned vehicle (truck). The appellants failed to give any probable explanation, not to speak about a satisfactory explanation to refute the burden under Section 55 of the N.D.P.S. Act.

Submissions on behalf of the appellants

13. Ms. Mira Kumari, the learned Counsel appearing on behalf of the appellants in both the appeals has submitted that there is violation and complete non-compliance of the provisions of Section 42 of the N.D.P.S. Act. As such, the entire



prosecution case stands vitiated on account of such violation. It has been submitted that the witnesses examined on behalf of the prosecution are members of the police team and there are contradictions in their statements and therefore, they are wholly unreliable. It has further been submitted that the learned Trial Court did not consider that the prosecution has failed to prove the alleged seizure of ganja, as the independent seizure witnesses have not supported the prosecution case and have stated in their depositions that nothing was recovered in their presence and that they had merely signed on plain paper. It has next been submitted that the mandatory provisions contained in Sections 50, 52, 52A and 57 of the N.D.P.S. Act have not been followed by the prosecution and in view thereof, the judgment and sentence are liable to be set aside.

14. It has further been submitted that during the entire deposition of the prosecution witnesses, none of them have stated about sampling being done from the seized material, though the same has been stated in the written report by the informant. No document such as the malkhana register has been exhibited or brought on record in order to substantiate that the seized material or the sample was kept in the malkhana. It is an admitted fact that the I.O had not given any application for



destruction of the seized material, as contemplated under Section 52A of the N.D.P.S. Act.

15. The learned counsel for the appellants has further submitted that the learned Trial Court has erred in convicting the appellants who were the driver and the co-driver (khalasi) and an occupant on the finding that the said ganja was kept in a secret box behind the driver's seat of the truck. The learned counsel has pointed out that the S.H.O has claimed that the sample was prepared at the spot in the presence of independent witnesses, but the said witnesses have not supported the sampling of the alleged ganja. Most importantly, the sample was sent for FSL examination after almost three months, which creates serious doubt regarding the alleged recovery of ganja. It has been emphatically submitted that no inventory of the alleged narcotic substance was prepared to certify the correctness of the alleged recovery and therefore, the impugned judgment and order are fit to be set aside.

Submissions on behalf of the State

16. Ms. Km. Shashi Bala Verma, the learned APP for the State has submitted that the prosecution has successfully proved the case against the appellants beyond all reasonable doubt by examining the witnesses who were present at the time



of search and seizure and that the evidence of police personnel cannot be discarded merely on the ground that they are official witnesses. The learned APP has stated that nothing has been brought on record by the defence to show that the said witnesses were interested or had any motive to falsely implicate the appellants. It has been contended that minor contradictions in the depositions of some of the witnesses cannot be fatal to the prosecution case and considering the huge consignment of 644.5 kg of ganja recovered from the truck in which the appellants were boarded, there cannot be any presumption of their innocence derived from such minor discrepancies.

17. The learned APP for the State has though admitted that from perusal of the records it appears that no application under Section 52A of the N.D.P.S. Act for destruction of the seized material was ever made before the learned Trial Court. However, she contends that otherwise there had been no violation of any provisions of the N.D.P.S. Act and the appellants were duly noticed under Section 50 of the N.D.P.S. Act and thereafter search and seizure was made.

18. The learned APP has further pointed out that sampling was done by the I.O and the same was sent for FSL examination at Patna, which has reported that the dry, pressed,



greenish brown flowering & fruiting vegetable like substance contained in each polythene packet was found to be ganja. It has thus been submitted that from the evidence on record, the prosecution has been able to prove the guilt of the appellants beyond all reasonable doubt and therefore there is no illegality in the impugned judgment and order and therefore the memo of appeal is fit to be dismissed.

Consideration

19. We have heard the learned counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State and also perused the Trial Court's records.

20. The factual backdrop of the present case is based on the *fardbeyan* of S.I. Anjay Aman, which was recorded at the place of occurrence, wherein it has been alleged that on receipt of secret information that a truck carrying a huge consignment of ganja was coming from Tripura via Katihar and Naugachia, and also that the said truck was being escorted by a Bolero vehicle in which some persons were travelling, a station diary entry was made and the senior officers were made aware of it. Thereafter, two teams were constituted and the truck was intercepted near a petrol pump and the Bolero vehicle was also



intercepted. Seven persons were apprehended and on search after giving notice under Section 50 of the N.D.P.S Act, 644.5 kg of ganja was recovered from a secret box behind the driver's seat. The apprehended persons disclosed that the same was being taken to Vaishali, Raghapur.

21. It has been stated in the F.I.R. that a seizure list was prepared of all the 110 packets, which was signed by two independent witnesses and also the apprehended accused persons and copies thereof were handed over to the accused persons and the independent witnesses. It was further stated that from the seized materials, small quantities from packets P1, P2, P3 and P4 were mixed and a sample was prepared and thereafter the seized materials were sealed in separate bundles.

22. We have taken note of the fact that the informant Anjay Aman (PW-2) has stated that he prepared samples on the spot from the seized materials and thereafter sealed the packets on the same day, i.e., 30.01.2018. However, during his deposition, he has not stated anything with regard to sampling being done at the place of occurrence, as stated in his self-statement. In paragraph 10 of his examination-in-chief, he has stated that the seizure list was prepared by him and the seized materials were kept in sacks and were sealed and was brought to



the police station for keeping in the malkhana. We have noted as a matter of fact that PW-2 did not talk about any sampling being done at the place of occurrence as stated by him in his self-statement. For argument's sake, even if, we take his statement in the F.I.R. that samples were drawn by taking some amount of material from packets P1, P2, P3 and P4, there is no reference of the same having been kept in the malkhana.

23. In furtherance to the same, we find that an application for sending the samples of seized materials to FSL at Patna and chemical laboratory at Kolkata was made by the I.O. and the permission was granted to him on the same day. However, on perusal of the FSL report, we have taken note of the fact that the sample was sent vide memo no. 795 of 2018, dated 30.04.2018. However, the same had reached the office at Patna on 23.07.2018, i.e., almost in three months.

24. From perusal of the deposition of the prosecution witnesses and the records, we have not found any reference with regard to the samples being at what place during the said period. In view of such observations made hereinabove, we find that the very sampling of the seized material becomes doubtful. We have further observed that the mandatory provision as enshrined under Section 52A of the N.D.P.S. Act with regard to the



certification of the seized material before the disposal has not been done and from the impugned judgment itself, we could find that the learned trial court has stated that the seized narcotics may be destroyed if the same has not yet been done.

25. We have perused the entire records and we have not found any application for disposal of the seized narcotic substance after certification by a magistrate. That leads us to question the veracity of the seizure made by the police in the present case. The provisions of Section 52A of the N.D.P.S Act, are as under:-

¹[52A. Disposal of seized narcotic drugs and psychotropic substances.-- ²[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any ³[narcotic drugs,

1. Ins. by Act 2 of 1989, s. 14(w.e.f. 29-5-1989).

2. Subs, by Act 16 of 2014, s. 17, for sub-section (1) (w.e.f. 1-5-2014).

3. Subs. by Act 16 of 2014, s. 17, for "narcotic drug and psychotropic substance" (w.e.f. 1-5-2014).



psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

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

(b) taking, in the presence of such magistrate, photographs of ⁵[such drugs, substances or conveyances] and certifying such photographs as true; or

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

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872* (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974)**, every court trying an offence under this Act, shall treat the inventory, the photographs of ⁴[narcotic drugs,

4. Subs. by Act 16 of 2014, s. 17, for "narcotic drug and psychotropic substances" (w.e.f. 1-5-2014).

5. Subs. by Act 16 of 2014, s. 17, for "such drugs or substances" (w.e.f. 1-5-2014).

*Now see the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) (BSA), vide S.O. 2790(E), dated 16th July, 2024.

**Now see the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) (BNSS), vide S.O. 2790(E), dated 16th July, 2024.



psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]

26. Sub-section (2) of Section 52A provides that in case of seizure of psychotropic substance or narcotic products the officer empowered under Section 53 shall make an application to any magistrate for the purpose of certifying the correctness of the inventory, take photographs and allow representative samples to be drawn in their presence.

27. We have seen that there is no certificate of any magistrate certifying the correctness of the inventory, nor have we observed any photographs of the seized materials leave alone any certification in regard to any sampling done before any magistrate. This is, in our view, in complete violation of Section 52A and that also draws an adverse inference against the prosecution with regard to the seizure of such a huge consignment.

28. Nothing has been brought on record to show that the seized materials were deposited in the malkhana and there is not a single document to show that the malkhana had kept the entire seized material, as stated by the prosecution witnesses and especially the informant. The said dereliction also goes against



the prosecution and the very seizure of such huge quantity becomes doubtful.

29. The deposition of various witnesses examined on behalf of the prosecution should be re-examined in order to ascertain as to the fact that the prosecution has been able to prove the case beyond all reasonable doubt against the appellants. PW-1, Mokarrat Hussain, who was an A.S.I., during his cross-examination has stated that the police team reached the place of occurrence at around 6:00 am to 6.30 am and waited there for about 3:00 to 3.30 hours and there was no fog during the said time and in fact, the weather was clear. In paragraph number 18 of his deposition PW-1 has stated that the contraband was seized and seizure list was prepared at the place of occurrence, however, he also does not refer to any sampling being done.

30. PW-2, Anjay Aman, the S.H.O and the informant of the case, has elaborately given the details as to the facts and circumstances of the case till the search and seizure was concerned. However, even he has not stated anything about sampling being done at the place of occurrence. But contradicting PW-1, he has stated that as it was winter season, there was dense fog. Nothing concrete has been elicited from



the deposition of PW-2.

31. PW-3, Mohan Paswan, the A.S.I. at the relevant time, has stated that he was part of the raiding team and when they had stopped the vehicles and searched them, 644.5 kg of Ganja was found in the truck. This prosecution witness was not able to tell the registration number of both the vehicles and he has said that the seizure list was prepared in presence of two independent witnesses, which was prepared by the S.H.O. and thereafter, incriminating articles along with the arrested accused persons were brought to the police station.

32. PW-4, Nand Lal Choudhary, who was an A.S.I posted at Sahayak Police Station, has also stated that he had also accompanied the raiding team and reiterated what has been stated in the F.I.R. He has also deposed that after searching the contraband articles, he along with others returned to the police station and has admitted that the seized articles were not produced in the court in his presence. To a specific question as to whether any vehicle was following the truck, he has stated that there was no vehicle following the truck.

33. PW-5, Raja Kumar, who was a constable, has stated that he has deposed what the station-in-charge has told him to say. PW-6, Jagdish Paswan was an S.I and was the I.O of



the case and he has stated that he was given the charge of investigation of the case by the S.H.O and he has stated that he has recorded further statements of the informant and had also visited the place of occurrence. He has stated that he had brought the truck at the police station and inspected the seized articles which was in a sealed condition.

34. During his cross-examination, he has stated that he did not receive the report of the FSL. Therefore, he was not in a position to say that the seized article was cannabis. He has fairly admitted that the charge-sheet was submitted without the report from the FSL. He has further admitted that the charge-sheet before the court was submitted in a hurry so that the accused persons could not get bail.

35. PW-7, Anjan Kumar was a constable in the STF Patna, he has stated that on 29.01.2018, his team had reached at Katihar police station from Patna and two teams were formed and at around 5:00 am to 5.30 am they went towards Katihar where the vehicles were intercepted and total 644.5 kg ganja was recovered from the truck. He has also stated that the seizure list was prepared after seizing the incriminating articles and the same was brought to the police station. This witness has stated that the accused persons disclosed that they were coming from



Tripura and were going to Raghopur. He identified the accused persons by face and not by their names.

36. PW-8, Sakesh Kumar, the constable from STF Patna has reiterated what PW-7 had stated as far as the search and seizure was concerned. However, with regard to the position of the vehicle and the exact place of occurrence, there is a difference between what PW-8 has stated to that what PW-7 has stated, especially in the fact that he has deposed that he could not remember as to whether there was a tea stall near the place of occurrence or not.

37. PW-9, Chulbul Kumar is also a constable from STF Patna and he has also stated that they proceeded from Patna to Katihar on a government vehicle and intercepted the truck and Bolero from which 644.5 kg of Ganja was recovered.

38. PW-10, Saddam Hussain, who was an independent witness, has stated that while he was sitting at a tea stall near the road, 2 to 3 officers came there and asked him to put his signature and on questioning them, the police officials told that it was merely a formality being done and he has subsequently stated that he had not seen any article. He had identified his signature upon the seizure list. However, he was declared hostile by the prosecution.



39. PW-11, Md. Ajijul, was also an independent witness but he could not remember about the incident and has also stated that he had not seen any truck seized or any material to be recovered from the truck. He also could not identify the accused persons and so therefore, he was declared hostile by the prosecution.

40. PW-12, Rajesh Kumar, a junior commando in STF Patna has stated that on the order of his superior officer, a team was constituted and they were informed that cannabis was transported from Tripura via Katihar. Two teams were constituted and they intercepted two vehicles and thereafter on search, 644.5 kg of Ganja was recovered and seizure list was made. He has also stated that the seized cannabis was kept in a bag and it was seized and brought to the police station. PW-12 has stated that they had checked many vehicles. He has denied to a suggestion that the accused persons belong to labour class and they were returning from Bengal after unloading cement and were going to load banana and they were taking breakfast at a hotel and they have wrongly been made an accused in the present case.

41. PW-13, Chandra Dhari Kumar was a constable in the S.T.F and he too has reiterated what others have stated as far



as the search and seizure is concerned. However, he could not remember any other officer, who had come to the police station during whole proceeding and as to what was the material kept in the recovered packets, this prosecution witness also could not tell the registration number of either the truck or the vehicle used by the police personnel.

42. PW-13 has specifically stated that the seized articles were sealed at the police station, but could not remember in how many packets it was sealed. He could also not tell whether any other activity was done at the place of occurrence.

43. From perusal of the evidence of the prosecution witnesses, one thing is very much clear that the seizure list witnesses have not supported the prosecution case as to seizure of contraband ganja in their presence. They have been declared hostile. There is no evidence of sampling, as stated in the FIR, at the place of occurrence. From perusal of the learned Trial Court records, we do not find that any sampling was done before the learned Trial Court. Thus, from the aforesaid, it could be ascertained that the sampling was not done in presence of the accused on the spot. There was no sampling in presence of a Magistrate. It is not clear as to when the sampling was done and



who are the witnesses of the sampling. The samples were sent for examination to the FSL Patna at a very belated stage and more importantly, the FSL report was produced at the fag end of the trial, i.e., on 24.11.2021 with objection.

44. We have taken note of the fact that the FSL report was prepared on 27.09.2019. However, for the reasons best known to the prosecution, the same was produced almost after two years before the learned Trial Court, which was objected to by the defense. However, from the perusal of the learned Trial Court records, it seems that the objection was set aside and the FSL report was marked as Exhibit-6. We also find that, contrary to the records, which suggest that an objection was raised by the defense for marking the FSL report as an exhibit, the learned Trial Court, in paragraph-22 of its judgment, has stated that the report was marked as Exhibit-6 under provision of 293 of the Cr.P.C as no party made any objection to this effect.

45. On the point of the non-compliance of the sections 42 of the N.D.P.S. Act, we have seen that the statutory mandate as per section 42(2) is to the effect that the officer who intends to search a conveyance between sunrise and sunset has to intimate his immediate superior official, the information recorded in writing and the grounds for his belief under section



42(1) within 72 hours.

46. We have seen that though the informant has stated that he had recorded about the secret information in the general diary of the police station and had also informed his superior official, however, nothing has been brought on record to substantiate such claim. We are, however, of the view that merely by making a general diary entry by the informant prior to proceeding ahead for search and seizure would not suffice for due compliance of Section 42(1) of the N.D.P.S. Act. The Hon'ble Supreme Court in ***Mahabir Singh v. State of Haryana, (2001) 7 SCC 148*** has held that court is forbidden from using such entries in the diary as evidence against the accused and the same cannot be used in any other manner against him.

47. In view of the above, the entry made in the general diary of the police station cannot be said to be in compliance of Section 42(2) and therefore, it falls short of due statutory compliance.

48. At this juncture, we would like to refer to the judgment rendered by the Hon'ble Supreme Court in ***Boota Singh v. State of Haryana, (2021) 19 SCC 606***, wherein the Hon'ble Supreme Court has held that non-compliance of Section 42 is not permissible in law.



12. In *Karnail Singh*², the Constitution Bench of this Court concluded : (SCC pp. 554-55, para 35)

“35. In conclusion, what is to be noticed is that *Abdul Rashid*⁵ did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did *Sajan Abraham*⁶ *hold* that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and *thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.*

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally

2. (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887

5. *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, (2000) 2 SCC 513 : 2000 SCC (Cri) 496]

6. *Sajan Abraham v. State of Kerala*, (2001) 6 SCC 692 : 2001 SCC (Cri) 1217

*Ed. : This word between two asterisks has been emphasised in original as well.



**precede* the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.*

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

(emphasis in original and supplied)

***Ed.** : This word between two asterisks has been emphasised in original as well.]



13. In *Jagraj Singh*⁴, the facts were more or less identical. In that case, the vehicle (as observed in para 5.3 of the decision) was not a public transport vehicle. After considering the relevant provisions and some of the decisions of this Court including the decision in *Karnail Singh*², it was observed : (*Jagraj Singh case*⁴ [*State of Rajasthan v. Jagraj Singh*, (2016) 11 SCC 687 : (2017) 1 SCC (Cri) 348] , SCC pp. 694-95 & 702, paras 14, 16 & 29)

“14. What Section 42(2) requires is that where an officer takes down an information in writing under sub-section (1) he shall send a copy thereof to his immediate officer senior. The communication Ext. P-15 which was sent to the Circle Officer, Nohar was not as per the information recorded in Ext. P-14 and Ext. P-21. Thus, no error was committed by the High Court in coming to the conclusion that there was breach of Section 42(2).

* * *

16. In this context, it is relevant to note that before the Special Judge also the breach of Sections 42(1) and 42(2) was contended on behalf of the defence. In para 12 of the judgment the Special Judge noted the above arguments of defence. However, the arguments based on non-compliance with Section 42(2) were brushed aside by observing that discrepancy in Ext. P-14 and Ext.

4. *State of Rajasthan v. Jagraj Singh*, (2016) 11 SCC 687 : (2017) 1 SCC (Cri) 348

2. *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887



P-15 is totally due to clerical mistake and there was compliance with Section 42(2). The Special Judge coming to compliance with the proviso to Section 42(1) held that the vehicle searched was being used to transport passengers as has been clearly stated by its owner Vira Ram, hence, as per the Explanation to Section 43 of the Act, the vehicle was a public transport vehicle and there was no need of any warrant or authority to search such a vehicle. The High Court has reversed the above findings of the Special Judge. We thus, proceed to examine as to whether Section 43 was attracted in the present case which obviated the requirement of Section 42(1) proviso.

* * *

29. After referring to the earlier judgments, the Constitution Bench came to the conclusion that non-compliance with requirement of Sections 42 and 50 is impermissible whereas delayed compliance with satisfactory explanation will be acceptable compliance with Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in para 5. The present is not a case where insofar as compliance with Section 42(1) proviso even an argument based on substantial compliance is raised there is total non-compliance with Section 42(1) proviso. As observed above, *Section 43 being not attracted, search was to be conducted after complying with the provisions of Section 42.* We thus, conclude that the High Court



has rightly held that non-compliance with Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order.”

(emphasis supplied)

49. It would be apposite to refer the judgment of the Hon’ble Supreme Court passed in the case of ***Darshan Singh v. State of Haryana, (2016) 14 SCC 358***, wherein in paragraph 13, the Hon’ble Supreme Court has held as under:

13. Having given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the respondent, we are of the view that the mandate contained in Section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal Procedure Code. Sub-section (1) of Section 41 of the NDPS Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Sub-section (2) of Section 41 refers to issuance of authorisation for similar purposes by the officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, etc. Sub-section (1) of Section 42 of the NDPS Act lays down that the empowered officer



if he has a prior information given by any person, should necessarily take it down in writing, and where he has reason to believe from his personal knowledge, that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building, etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belief. The two separate procedures noticed above are exclusive of one another. Compliance with one, would not infer compliance with the other. In the circumstances contemplated under Section 42 of the NDPS Act the mandate of the procedure contemplated therein will have to be followed separately, in the manner interpreted by this Court in *Karnail Singh case*² and the same will not be assumed, merely because the Station House Officer concerned had registered a first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code.

50. We have observed from the impugned judgment that the learned trial court though has found the Bolero vehicle being seized along with the truck which was carrying ganja, however, on the same set of evidence it has been held that the prosecution has not been able to connect all passengers of the Bolero vehicle i.e., accused nos. 1 to 4 with transportation of the

² *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887



said cannabis or were in any manner in criminal conspiracy as per Section 29 of the N.D.P.S Act but on the same set of facts and evidence, the learned Trial Court has gone on to hold the appellants guilty of the offence of transporting cannabis merely because they were found to be traveling in the truck and there was no explanation as to how those packets have come to be concealed in their vehicle without their knowledge. We have already seen that the case of the prosecution was that they had a specific knowledge that a truck carrying contraband substance ganja was being carried on a truck and the said truck was being escorted by a Bolero vehicle.

51. Even during the examination of the witnesses each witness has categorically stated that four accused persons were riding on the Bolero vehicle and they were also apprehended along with the truck and also the fact that the said persons who were riding the Bolero vehicle were arrested and forwarded to jail, however, the learned trial court has not found them guilty of the offence under the N.D.P.S Act merely because they were not on the truck from which the narcotic substance was recovered.



52. As already observed that nothing has been brought on record to show that the seized materials were deposited at the malkhana and no sample was produced before the learned trial court and the same was never matched with any representative sample and therefore merely on presumption that there was seizure of 644.5 kg ganja from the truck and the samples of which were prepared at the place of occurrence and sent to the FSL Patna and Kolkata becomes doubtful.

53. We have already noted the fact that the FSL report from Kolkata was not brought on record for the reasons best known to the prosecution. In these circumstances, we are of the considered opinion that the prosecution has not proved its case beyond all reasonable doubt, therefore, we set aside the judgment and order of conviction and sentence of the appellants and acquit them of the charges giving them benefit of doubt. The appellants shall be released forthwith if not wanted in any other case.

54. These appeals stand allowed.

55. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for



compliance and record.

56. The records of these appeals be returned to the learned Trial Court forthwith.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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