IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.879 of 2019

Arising Out of PS. Case No.-60 Year-2018 Thana- MUFFASIL District- West Champaran

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VIJAY MUKHIYA S/o Late Shiv Pujan Mukhiya R/o village- Amawa Majhar, P.S.- Bettiah (Mufasil), District-West Champaran

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Dhananjay Kumar, Advocate
Mr. Sanjeev Kumar Shrivastava, Advocate
For the State : Mr. Sujit Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 15-01-2026

The instant criminal appeal is directed against the judgment of conviction dated 29.05.2019 and order of sentence dated 31.05.2019 passed by the learned District and Sessions Judge, Bettiah, West Champaran in Trial No.18 of 2018 convicting the appellant for committing offence under Sections 20(b)(ii)(c) of the N.D.P.S. Act and sentencing him to suffer rigorous imprisonment for ten years and also to pay fine of Rs.1,00,000/-, in default of payment of fine, further imprisonment for a period of three years.

2. Prosecution case in brief, is that police personnel attached to Bettiah Muffasil Police Station under the leadership

of one Ramadhar Ram, Sub-Inspector of Police, Bettiah Muffasil police station conducted raid on 10.02.2018 at about 10:00 P.M. and while in raid S.I. Ramadhar Ram received an information from S.H.O. Bettiah Muffasil police station directing them to return to the police station for conducting special raid at village Amawa Majhar.

3. On being directed as such, the police party under the leadership of S.I. Ramadhar Ram reached village-Amawa Majhar on 11.02.2018 at about 12:30 A.M. at night and on the basis of previous information surrounded the house of Vijay Mukhiya. The police officer called two local persons, namely, Jagdish Mukhiya and Sunil Sahni to be the independent witnesses of search and seizure.

4. The police party alongwith the independent witnesses conducted search of the house of Vijay Mukhiya but no incriminating material was recovered from him. However, from the roof of the house of Vijay Mukhiya police recovered a blue coloured half jacket with 15 packets of some materials kept concealed in the said jacket. On bare examination, the packets were smelling substance like Charas. Police recovered 15 packets of Charas weighing about 6 kg. and 300 grams concealed inside the said jacket lying on the roof of the house of

Vijay Mukhiya and seized the said packets of Narcotic substance under a seizure list in presence of the witnesses and the appellant.

5. The appellant was arrested. A written report was submitted by S.I. Ramadhar Ram to the S.H.O. of Bettiah Muffasil Police Station on 11.02.2018 and on the basis of the said written complaint a case under Section 21, 22 and 23 of the N.D.P.S. Act was registered against the appellant. One S.I. Laxman Prasad Singh was directed to take up the investigation of the case. He took up investigation. During investigation, he examined the witnesses, got the seized Narcotic substance examined by the Regional Forensic Science Laboratory, Muzaffarpur and obtained the report that the seized materials were found to contain Charas {(a cannabis plant product whose chip Psychoactive ingredient is Tetra Hydro Cannabinal (THC)}. Accordingly, charge sheet was filed against the appellant on 05.05.2018 under Section 21, 22 and 23 of the N.D.P.S. Act before the learned Sessions Judge, Bettiah. The learned Sessions Judge, Bettiah took cognizance of offence on submission of charge sheet under Section 193 Cr.P.C. vide order dated 10.05.2018.

6. The learned Sessions Judge framed charge against

the appellant under Sections 20(b)(ii)(c), 22(c) and 23(c) of the N.D.P.S. Act. As the appellant pleaded not guilty and claimed to be tried when the charge was read over and explained to him he pleaded not guilty.

7. During Trial, the prosecution examined six witnesses. Amongst them, PW-1 is A.S.I. Ram Kumar Ram, P.W.-2-Ramadhar Ram was the Sub-Inspector of Police under whose leadership the raid was conducted. PW-3 Brajesh Kumar Pathak was a retired ASI of police, who also took part in the raid in question. PW-4 Ravindra Nath Singh is a Constable of State Armed Police. PW-5 Laxman Prasad Singh is the First Investigating Officer and P.W.-6 Hari Bhushan Ram is the second Investigating Officer, who collected F.S.L. report of the seized materials and submitted charge sheet against the accused.

8. After examination of the witnesses on behalf of the prosecution, the appellant was examined under Section 313 of the Cr.P.C.. He pleaded his innocence. It was specifically stated by him that he did not know as to whether any jacket containing 15 packets of Charas were thrown away and had fallen on his roof, he had no knowledge about the said jacket or Narcotic substance. The jacket also did not belong to him.

9. The appellant also examined Jagdish Mukhiya and

Bharat Ram, who were cited as independent witnesses to the seizure. It is found from their evidence that one Chandeshwar Mukhiya was the opponent of Vijay Mukhiya. Chandeshwar used to carry on business of illicit liquor. Due to enmity Chandeshwar falsely implicated Vijay in the instant case.

10. The learned Advocate on behalf of the appellant has assailed the impugned order of conviction and sentence in course of his argument. It is submitted by him, at the first instance that all the witnesses were police personnel, who conducted raid allegedly in the house of the appellant during dead hours of night. Though, the prosecution claimed that the raid was conducted in presence of two independent persons and they were cited as witnesses on behalf of the prosecution, they did not come forward to support the prosecution case. On the other hand, they supported the appellant and examined as defence witnesses. It is ascertained from their evidence that the appellant is a man of noble character. He is not involved in any short of activities of business of Narcotic drugs. The appellant was falsely implicated by one Chandeshwar Ram, a neighbour of the appellant, who used to run an illegal business of illicit liquor.

11. It is further contended by the learned Advocate for

the appellant that the contraband articles were not found inside the house or room of the appellant. It was found concealed in a half jacket on the roof of the house of the appellant. The learned Advocate for the appellant further submits that the roof is accessible by anybody. Any person might throw away the jacket concealing narcotic substance inside it on the roof of the appellant. Therefore, the narcotic substance was not found and seized from conscious physical possession of the appellant.

12. The learned Advocate for the appellant further submits that the witnesses on behalf of the prosecution made contradictory statements with regard to the place of recovery. While PW-1 stated in course of his evidence that the jacket containing Charas was recovered from the middle of the roof. PW-2 stated that it was recovered from the northern side railing of the roof of the house of the appellant. Again PW-3 stated that the contraband was recovered from southern side of the roof.

13. Another important circumstance pointed out by the learned Advocate on behalf of the appellant that there is no evidence as to whether the alleged seized Narcotic substance were sealed and levelled immediately after the seizure or not. No evidence regarding sealing of contrabands and no lebel of the same were produced during Trial of the case. The

prosecution also failed to produce *Malkhana* register to show that the articles that were allegedly seized from the roof of the appellant was actually sent to the F.S.L. or not.

14. The prosecution has also failed to obtained and prepare sample seizure of the Narcotic substance. From the F.S.L. report (Exhibit-4), it is found that one plastic Dibba wrapped in a within cloth cover in sealed condition with two Tin Dibbas were sent to the Regional Forensic Science Laboratory, Muzaffarpur for examination. The sample seizure was not made before the Magistrate. There was no label of the samples of seized articles. Therefore, the prosecution failed to produce any evidence with regard to seizure of sample of contraband articles as per the requirement of the N.D.P.S. Act.

15. It is also submitted by the learned Advocate on behalf of the appellant that the prosecution failed to discharge its procedural safeguards mandated under Sections 42, 55, 52A and 57 of the N.D.P.S. Act.

16. Learned Advocate on behalf of the State, on the other hand has supported the impugned judgment passed by the learned District and Sessions Judge against the appellant.

17. Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record, we are

in agreement with the learned Advocate on behalf of the appellant that the seized narcotic substance was not sealed and levelled in presence of independent witnesses immediately after seizure.

18. As per the prosecution case, 15 packets of Charas were recovered from the roof of the appellant in the night of 11.02.2018. Sample of Charas in two numbers of Tin Dibba in a sealed Plastic Dibba was sent to F.S.L. on 11.04.2018 for examination. There is absolutely no evidence that the seized Narcotic substance was produced before the learned Chief Judicial Magistrate in sealed condition. The learned Chief Judicial Magistrate, Bettiah or any other Magistrate instructed to open the seal and label and obtained certain amount of Narcotic substance from each of 15 packets for sampling and certifying the seized contraband in presence of the Judicial Magistrate.

19. There is absolutely no evidence about the place where the Narcotic substance were kept after seizure for about two and half months before the said articles were sent for scientific examination. Therefore, in the instant case there is clear violation of the provisions of Section 52A of the N.D.P.S. Act, which severely affects the prosecution case. Mandatory provision of Section 52A of the N.D.P.S. Act was not at all

followed by the prosecution.

20. The decision of a Coordinate Bench passed in Criminal Appeal (DB) No.21 of 2023 on 25.07.2025 in the case of ***Nek Mohammad @ Raj Mohammad Vs. The State of Bihar*** may be relied on in this regard.

21. In ***Abdul @ Ziya and others Vs. The State of Bihar***, reported in ***2015(4) PLJR 153***, this Court found that there is nothing on record to show that the seizing officer sealed the seized articles at the place of seizure or any time even thereafter, in presence of independent witnesses. There is no evidence to show that any sample from the seized articles was drawn on the spot of the recovered in presence of the accused. Non-collection of sample at the initial stage of seizure was a defect, which could not have been cured later on.

22. The Court relied on the decision of the Hon'ble Supreme Court in ***Kuldip Singh Vs. State of Punjab,*** reported in (***2010) 10 SCC 219,*** to hold that non-collection of samples at the initial stage of seizure was a defect, which could not have been cured in the manner in which it was done. Subsequently, by opening the bags by some unknown persons and taking the samples in Tin Dibbas, there is obvious violation of Section 42 of the N.D.P.S. Act.

23. In ***Noor Aga Vs. State of Punjab***, reported in ***(2008)16 SCC 417***, the Hon'ble Supreme Court had the occasion to deal with the question as to whether or not non-compliance of the guidelines issued with a Standing Instruction No.01 of 1988 by the Narcotics Control Bureau, New Delhi vitiates the entire trial or not. In paragraph No.89 to 91 the Hon'ble Supreme Court held as hereunder :-

> "89.Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rig-ours of such guidelines may be in-sisted upon. Another important factor which must be borne in mind is as to whether such directions have been is-sued in terms of the provisions of the statute or not. When directions are is-sued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordi-nate authorities to comply therewith.
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> 90. Recently, this Court in State of Kerala & Ors. vs. Kurian Abraham (P) Ltd. & Anr. [(2008)3 SCC 582), following the earlier decision of this Court in Union of India vs. Azadi Bachao Andolan [(2004)10 SCC 1] held that statutory instructions are mandatory in nature.
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> 91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

24. There is another aspect of the matter, the Forensic

Science Laboratory receives the samples of narcotic substance in a sealed cover wrapped with cloth, but in its report the impression of seal was not stated. There is absolutely no evidence, when the samples were taken, how it was taken whether it was taken before the learned Judicial Magistrate or not ? Whether there was counter signature made by the learned Judicial Magistrate or not, and if there was inordinate delay in taking the samples from the seized narcotic substance.

25. In a very recent decision in the case of ***Bharat Aambale Vs. State of Chhattisgarh***, reported in ***2025 SCC OnLine SC 110***, the Hon'ble Supreme Court was pleased to discuss the scope and purport of Section 52A sub-section (4) with a view to obviate confusion. Paragraph No.34 and 35 of the aforesaid judgment are absolutely relevant and quoted below:-

> "34. At this stage we may clarify the scope and purport of Section 52A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the magistrate as primary evidence.
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> 35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules/Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to

> mandatorily be treated as primary evidence. The use of the word "shall" indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules/Standing Order(s).”

26. Finally the Hon’ble Supreme Court was pleased to set-out the following conclusion in paragraph No.50 of the judgment. Paragraph No.50 is reproduced below:-

> “50. summarize our final conclusion as under:-
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> (I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure Inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.
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> (II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), vet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.
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> (III) Any inventory, photographs or samples of seized substance prepare in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder

would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

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

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

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

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse Inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar farts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of Illicit material under Section 54 of the

> NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.
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> (IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.
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> (X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

27. Considering the absolute paucity of evidence adduced by the prosecution and the judgments passed by the Hon'ble Supreme Court as well as this Court, we are of the view that when mere possession of contraband articles i.e. narcotic substance is itself a serious offence leading to severe punishment. The fact of possession, seizure of contraband articles, sealing and levelling of the seized articles, taking samples of the same etc. are to be strictly proved, failing which the accused cannot be held guilty for the offence under the N.D.P.S. Act.

28. In the instant appeal, we have no other alternative but to set aside the impugned judgment of conviction dated 29.05.2019 and order of sentence dated 31.05.2019 passed by

the learned District and Sessions Judge, Bettiah, West Champaran in Trial No.18 of 2018, because of the fact that the learned Judge failed to appreciate the mandatory requirement to be followed in search and seizure under the N.D.P.S. Act.

29. Accordingly, the instant criminal appeal is allowed on contest. The appellant be released at once, if not wanted in any other case.

30. Seized narcotic substance be destroyed after expiry of the period of appeal before the Hon'ble Supreme Court.

(Bibek Chaudhuri, J)

I agree.

(Dr. Anshuman, J)

mdrashid/-

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