



2025:CGHC:22673

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Jugment Reserved on: 01/05/2025

Judgment Delivered on: 09/06/2025

CRA No. 462 of 2021

1 - Vikky Kumar S/o Late Ramasankar, Aged About 28 Years Caste Rajput, R/o. Karinda Mushari, P.S. Musafir, Chapra (Bihar), Bihar

... Appellant(s)

versus

1 - State of Chhattisgarh Through P.S. Bhanpuri, District Baster, Chhattisgarh, District : Bastar(Jagdapur), Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. Nitansh Kumar Jaiswal, Advocate.

For Respondent/State : Ms. Laxmeen Kashyap, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

CAV Judgment

1. The present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure 1973, (for short the, Cr.P.C.) against the impugned judgment of conviction and sentence dated 15.01.2021, passed by learned Special Judge (NDPS Act) Jagdalpur, District- Baster, (C.G.) in Special Criminal Case (NDPS Act, 1985) No. 02/2018, whereby the appellant is convicted for the offence under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentenced him for R.I. for 10 years with fine of Rs.1,00,000/-

in default of payment of fine additional R.I. for 02 years.

2. Brief facts of the case are that on 06.12.2017, the Assistant Sub Inspector of Police Subhash PW-9, received a secret information that the illegal Ganja is being transporting in an red colour mini truck bearing No. CG04AL5309, which was coming from towards Raipur. The secret information was recorded in Rojnamcha Sanha No. 14 on 06.12.2017. The independent witnesses, Bhagat Singh Thakur PW-3, and Dhanurjay Netem PW-4 were called by Constable Pushkar Tiwari (PW-6). When they appeared in the Police Station, they were informed about the secret information, and a secret information panchnama (Ex. P-23) was prepared. The copy of the secret information panchnama and the necessity to search without warrant panchnama was forwarded to the SDOP, Bhanpuri, and the police party proceeded towards the place of incident, and their departure has also been recorded in the Rojnamcha Sanha (Ex. P-2). When the police party reached near Bhanpuri Police Station NH-30, they found the suspected mini truck coming from the Jagdalpur side. They stopped the said mini truck in which two persons were found sitting. The driver of the mini truck disclosed his name as Vicky Kumar (present appellant), and the other person sitting in the mini truck disclosed his name as Kameshwar Yadav (since dead). They were apprised of the secret information. Notice under Section 50 of the NDPS Act (Ex. P-6) was also given to the accused persons, and they were informed about their right to search. Their consent was obtained that they are ready to be searched by the police officer. Before their search, the police party had also given their own search. On being searched of the police party, no incriminating articles were found. When the mini truck of the accused persons/appellant was searched, 7 bags containing Ganja were recovered from the secret chamber made in the mini truck. The material of the bags was physically identified by rubbing, smelling and burning, and the witnesses have identified it to be of Ganja. After physical verification of the weighing apparatus and weighing of

the recovered Ganja, it was found to be 520.00kg. Two samples of 50gm each were separated from each bag and sealed. The bags and sample packets were numbered respectively and sample panchnama Ex.P/15 was prepared, the mini truck, RC book of the mini truck which was in the name of Vicky, fitness and insurance certificate, driving license of Kameshwar Yadav, Ganja and its sample packets were seized vide seizure memo Ex.P/1. The seized articles and the accused persons were taken to the police station, and the seized articles were kept in the safe custody of the Malkhana. The accused persons were arrested, and FIR Ex.P/35 was registered. The details of the proceedings were also sent to SDOP, Bhanpuri, which is Ex.P/37. The spot map Ex.P/20 and panchnama Ex.P/21 were prepared by the patwari. The sample packet of Ganja was sent for its chemical examination to State FSL, Raipur, from where report Ex.P/41 was received and the contents of the sample packet were found to be Ganja.

3. Statement of the witnesses under Section 161 of Cr.P.C. has been recorded, and after completion of the usual investigation charge-sheet has been filed against the accused persons for the offence under Section 20(b) of the NDPS Act.
4. Learned trial Court has framed the charge against the accused persons for the offence under Section 20(b)(ii)(C) of the NDPS Act. The accused persons denied the charge and claimed for trial. During the trial, the accused Kameshwar Yadav died on 01.01.2021, and his death was reported by the jail authorities on 06.01.2021, which has been recorded in the order-sheet of the learned trial Court, and the case against the deceased accused Kameshwar Yadav is abated vide order dated 13.01.2021.
5. In order to prove the charge against the accused persons, the prosecution has examined as many as 10 witnesses. Statement of the appellant under Section 313 of the Cr.P.C. has also been recorded in which he denied the circumstances appearing against him, pleaded innocence and submitted that

he has been falsely implicated in the offence.

6. After considering the evidence led by the prosecution, the learned trial Court has convicted and sentenced the appellant as mentioned in the earlier part of this judgment. Hence, this appeal.
7. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made the basis to convict the appellant for the alleged offence. There is non-compliance with the mandatory provisions of Sections 42, 50, 52, 52A, 55 and 57 of the NDPS Act. There is absolutely no compliance with the standing Order No.1/89 issued by the Central Govt. with respect to the procedure for drawing samples, and in the absence of any proper procedure drawn by the investigating officer, the entire proceeding vitiates. He would further submit that there are discrepancies in the entries made in the Malkhana Register and the samples sent for their chemical examination, as there is no entry in the Malkhana Register taking out the samples from there to send them to FSL. The independent witnesses have not supported the prosecution's case, and the prosecution has failed to prove that the appellant was found in exclusive and conscious possession of the seized Ganja, and therefore, there is no sufficient evidence on record to connect the appellant with the offence in question, and thus, he is entitled for acquittal.
8. On the other hand, learned counsel for the State opposes and has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omissions or contradictions, their evidence is fully reliable. The minor discrepancies, which are trivial in nature, do not affect the credibility of the prosecution's case. There is no reason for the prosecution to falsely implicate the appellant in a huge quantity of Ganja, or in the case of having possession of said huge quantity of Ganja. He would further submit that the mandatory provisions of the NDPS Act have been duly proved as per its requirements.

There is no explanation from the appellant as to how they came into possession of such a huge quantity of Ganja. After considering the entire evidence available on record, the learned trial Court has rightly come to the conclusion that the appellant is guilty of the alleged offence and has convicted and sentenced the appellant, which needs no interference.

9. I have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
10. PW-9, Subhash Singh, who is the Assistant Sub Inspector of Police, has stated in his evidence that on 06.12.2017, he received secret information that Ganja is being transported in a red colour mini truck bearing registration No. CG04AL5309 from Jagdalpur side. The secret information was recorded in the Rojnamcha Sanha No.14, which is Ex.P/27 and the copy of the secret information panchnama is Ex.P/23. Two independent witnesses were called by Constable Pushpendra Tiwari, which has also been recorded in Rojnamcha Sanha No. 15 (Ex.P/28). The necessity to search without warrant, panchnama Ex.P/31 was also prepared. Two independent witnesses, Bhagat Singh Thakur and Vijay Netam, came to the police station, which has also been endorsed in Rojnamcha Sanha No.17 (Ex.P/29). The secret information panchnama and the necessity to search without a warrant panchnama were forwarded to the SDOP, Bhanpuri, through the constable Gendlal Kashyap PW-1. The notice given to the independent witnesses is Ex.P/4, and they gave their consent, which is Ex.P/30. On 06.12.2017 at about 09:05 a.m., he prepared the secret information, panchnama Ex. P/24 and after recording their departure from the Police Station in Rojnamcha Sanha No. 18 (Ex.P/2), they proceeded towards the place of the incident. They stopped the red color mini truck bearing No. CG04AL5309 in front of Bhanpuri, Police Station, NH-13 and two found two persons were found sitting in the vehicle. Both of them disclosed their names as Vicky Kumar and Kameshwar Yadav.

11. He gave them a notice under Section 50 of the NDPS Act (Ex.P/6), and informed them about their right to search, that they have the right to be searched by any Police officer, Gazetted officer or any Magistrate. The police party gave their own search to the appellant and talashi panchnama Ex.P/7 was prepared, and nothing incriminating was found on their search. On being in search of the said mini truck, which was in possession of the accused persons, he recovered 7 bags containing contraband from the secret chamber prepared in the mini truck and talashi panchnam Ex.P/8 was prepared. The said 7 bags of contraband Ganja were recovered, and recovery panchnama Ex.P/9 was prepared. Notice under Section 67 of the NDPS Act, Ex.P/10 was also given to the accused person with respect to the valid document of possession of the Ganja, but no document has been produced by them. The recovered contraband Ganja was physically identified by its rubbing, smelling and burning, and identification panchnama Ex.P/11 was prepared. The electronic weighing machine, which was taken by them, was physically verified, and a panchnama Ex.P/12 was prepared. After weighing, the following quantity of Ganja was found in each bag:

Bag No.	Weight
1.	34.200kg.
2.	33.700kg
3.	34.500kg
4.	30.800kg
5.	32.700kg
6.	26.700kg
7.	57.400kg

12. The total weight of 7 bags of Ganja was 250.00kg, and the weightment panchnama Ex.P/13 was prepared. Each bags were opened on the spot, and the contents of each bag were homogenized separately, and two samples of 50gm each were separated from each bag and a total of 14 sample packets (700gm) were separated and separately sealed. The remaining Ganja of

249.300kg was also separately sealed, and the homogenization panchnam Ex.P/14 was prepared. After the weighing and sampling, the sample packets were marked as follows:

Bag No.	Sample Packets
1.	Article A-1 and A-2
2.	Article B-1 and B-2
3.	Article C-1 and C-2
4.	Article D-1 and D-2
5.	Article E-1 and E-2
6.	Article F-1 and F-2
7.	Article G-1 and G-2

13. The sample panchnama Ex.P/15 was prepared. On 06.12.2017, on a red colour mini truck bearing No. CG04AL5309, RC book which was in the name of Vicky Kumar, fitness and insurance certificate of the vehicle, driving license of Kameshwar Yadav. Ganja and its sample packets were seized, and seizure memo, Ex.P/1, was prepared. The specimen seal panchnama Ex.P/16 was also prepared. The accused persons were arrested and their arrest was informed to their family members. Dehati Nalisi Ex.P/33 was prepared on the spot and thereafter along with the accused persons, the seized article and mini truck, the police party came back to police station and their arrival was also recorded in Rojnamcha Sanha No. 39 Ex.P/34. The Sub Inspector B. P. Joshi PW-10 has recorded the FIR Ex.P/35 on the basis of the Dehati Nalishi and relevant Rojnamcha is Ex.P/36. The details of the proceedings Ex.P/37 were forwarded to the SDOP, Bhanpuri on 08.12.2017, which is Ex.P/37. The spot map Ex.P/38 was prepared by him, and statements of the witnesses Bhagat Singh Thakur and Dhanurjay Netam were recorded. Spot map Ex.P/20 and panchnama Ex.P/21 were submitted by the Patwari along with his report Ex.P/22. The seized article and sample packets of Ganja were kept in the safe custody of Malkhana through the Malkhana Moharir, and the sample packets were sent for their chemical examination to the Regional FSL, Raipur, along with the memo of the

Superintendent of Police, Baster and obtained acknowledgement Ex.P/40. The FSL report Ex.P/41 was received, and in all the sample packets marked with A-1, B-1, C-1, D-1, E-1, F-1 and G-1, Ganja contents were found. After the completion of the usual investigation charge sheet was filed against the accused persons, and he brought the sample packets before the Court. In cross-examination, he stuck to the entire search and seizure proceeding, which he conducted on the spot. But for minor omissions or contradictions, which are trivial in nature, nothing could be extracted from his cross-examination so that the evidence of this witness can be disbelieved. From the evidence of this witness, it reflects that he has complied with all the mandatory provisions of the NDPS Act during the search and seizure proceedings, and panchnamas have been prepared.

14. PW-1, Gendlal Kashyap is the constable who has taken the copy of Rojnamcha Sanha Ex.P/1 and Ex.P/2 and search without warrant panchnama Ex.P/3 to the office of SDOP, Bhanpuri.
15. PW-2, Phool Singh, is the constable and Malkhana Moharir at Police Station, Bhanpuri. On 06.12.2017, he received 7 bags containing Ganja and 14 sample packets, which were marked respectively as per their bag numbers, and it was kept in the safe custody of Malkhana. The relevant entries have been made in the Malkhana Register, which is Ex.P/1 and Ex.P/2. In cross-examination, he stated that Subhash Singh has taken the seized article to the police station for keeping in the Malkhana. He could not remember the time to deposit the articles in the Malkhana. He also stated that the seized articles were sealed. From the cross-examination of this witness, the defence could not extract any material, so that it could be held that the sample packets were tampered.
16. PW-3, Bhaghat Singh Thakur and PW-4, Dhanurjay Netam, are the independent witnesses. Although they have not supported the prosecution case and turned hostile but they admitted their signatures in the documents

Ex.P/1 to Ex.P/19.

17. PW-4, Parmeshwar Dhruw, is the constable and has taken the 7 sample packets of Ganja (article A-1, B-1, C-1, D-1, E-1, F-1 and G-1) to the State FSL, Raipur on 11.12.2017 and obtained its acknowledgement.
18. PW-6, Pushkar Tiwari, is also a police constable and a member of the search party. He stated in his evidence that on 06.12.2017, under the instruction of Assistant Sub Inspector Subhash Singh, he called two independent witnesses Bhagat Singh Thakur and Dhanurjay Netam and relevant entries have been made in Rojnamcha No. 17. They intercepted the red colour mini truck in front of the Bhanpuri, Police Station in which two persons were found sitting. On being searched of the mini truck, 250.00kg Ganja was recovered, which was kept in 7 bags, and he physically verified the weighment apparatus and panchnama, Ex.P/12 was prepared. He weighed the Ganja and weighment panchnama Ex.P/13 was prepared. In cross-examination, he stated that all 7 bags were separately weighed. After it was weighed separately, the Ganja was homogenized, and its total weight was 250.00kg. The electronic weighing machine was used in the process of the search and seizure procedure for weighing the Ganja.
19. PW-7, Tuleshwar Kashyap, is the Patwari who prepared the spot map Ex.P/20, panchnama Ex.P/21 and submitted it along with the report Ex.P/22.
20. PW-8, Phaganuram Kashyap, is a police constable and was posted at the SDOP office, Bhanpuri. He proved the acknowledgement, Ex.P/23, the necessity to search without warrant panchnama Ex.P/3. The secret information panchnama Ex.P/24. The doc register Ex.P/25 and Ex.P/26.
21. PW-10, B. P. Joshi is the Sub Inspector of Police who registered the FIR Ex.P/35 on the basis of Dehati Nalisi on 06.12.2017.
22. From the evidence of these witnesses, the prosecution has proved the search and seizure proceedings of Ganja from the accused persons. In the light of the aforesaid evidence available on record. Now I consider the law

laid down by the Hon'ble Supreme Court on the grounds of non-compliance with the mandatory provisions of the NDPS Act, raised by the appellant.

23. The submission of the learned counsel for the appellant that Provisions of Section 42 of the Act have not been complied with.
24. PW-9, Subhash Singh, has explained that he sent secret information to his senior official through Constable Gendlal Kashyap PW-1, and he proved the acknowledgement Ex.-P/23 and Ex.P/24 with respect to the receipt of the intimation about the secret information. Further from the evidence of PW-8, Phagnuram Kashyap, the receipt of a copy of secret information Ex.P/23 and Ex.P/24 have been proved. Even otherwise, Section 42 would not be applicable in the case as the Ganja has been seized from a public place and therefore, Section 43 of the NDPS is applicable, which provides that:-

“43. Power of seizure and arrest in public place- Any officer of any of the departments mentioned in section 42 may:-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; (b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation- For the purposes of this section, the expression public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”

25. The contraband was recovered and seized from an open place from the car of the appellants. As the contraband were recovered and seized from the public place which was kept in total 25 packets, as contemplated in Section 43(a), i.e., “seized in any public place or in transit”, this Court is of the considered opinion that Section 43 of the NDPS Act is applicable and as such, recording for reason for belief and for taking down of information

received in writing with regard to the Commission of offence before conducting search and seizure, is not required to be complied with under Section 43 of NDPS Act.

26. The next submission of the learned counsel for the appellants that Section 50 of NDPS Act has also not been complied with as the right to the appellants about their search have not been informed by the police authority in accordance with law as provided under Section 50 of the NDPS Act.
27. The provisions of Section 50 is not applicable to the present search of the accused persons, because in the present case, the Ganja was recovered from the car of the appellants which cannot be said to be their personal search. The search of the car of the appellants does not comes under the requirement of Section 50 of the NDPS Act and search of a person is distinguished from search of any conveyance etc.
28. In the matter of ***State of Punjab vs. Baldev Singh*** reported in **1999 (6) SCC 172** in Para 12 of its judgment the Hon'ble Supreme Court has held:

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

29. In the matter of ***Kulwinder Singh and Another vs. State of Punjab*** reported in **2015 (6) SCC 674** in Para 18 and 21 of its judgment the Hon'ble Supreme Court has held that:

"18. In *Dharampal Singh v. State of Punjab*, it has been ruled that the expression "possession" is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in *Mohan Lal v. State of Rajasthan*¹¹, after referring to certain authorities, this Court has held as follows:-

"21. From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act

could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion."

21. In *State of H.P. v. Pawan Kumar*, it has been held that:

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be — "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn,

they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the work 'person' would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

30. The next submission made by learned counsel for the appellant is that the Section 52A of the NDPS Act as well as Circular of 1/89 issued by Central Government have not been complied with in the case for drawing of the samples from the seized articles. Therefore, there is substantial non-compliance of the mandatory provisions of the NDPS Act and the appellant is entitled for acquittal.
31. From the evidence of PW-9, Subhash Singh, it comes on record that when he received secret information, he constituted the search party, called the independent witnesses and proceeded to the place of the incident. After some time, the accused persons came there on their mini truck, who were found in possession of the alleged Ganja kept in total 7 bags in a chamber prepared in the mini truck. The total quantity of Ganja was found 250.00kg. on its weighment.
32. Recently in the matter of ***Bharat Aambale vs. The State of Chhattisgarh*** in

CRA No. 250 of 2025, order dated 06-01-2025, the Hon'ble Supreme Court has held that irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act if the other material on record adduced by the prosecution inspires confidence and satisfies the Court regarding both recovery and possession of the contraband and from the accused, then even in such cases the Courts can without hesitation proceed for conviction notwithstanding any procedural difficulty in terms of Section 52-A of the NDPS Act.

33. In the matter of **Bharat Aambale** (supra) the Hon'ble Supreme Court in Para 25 to 37 has held as under:

“25. In **Noor Aga** (supra) the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

“107. The seal was not even deposited in the malkhana. As no explanation whatsoever has been offered in this behalf, it is difficult to hold that sanctity of the recovery was ensured. Even the malkhana register was not produced.

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108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was 11.20 p.m. PW 1 Kulwant Singh and PW 2 K.K. Gupta, however, stated that the time of seizure was 8.30 p.m. The appellant's defence was that some carton left by some passenger was passed upon him, being a crew member in this regard assumes importance (see Jitendra para 6). The panchnama was said to have been drawn at 10 p.m. as per PW 1 whereas PW 2 stated that panchnama was drawn at 8.30 p.m. Exhibit PA, containing the purported option to conduct personal search under Section 50 of the Act, only mentioned the time when the flight landed at the airport.

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111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note."

(Emphasis supplied)

26. Non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution. However, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case. Such delay or deviation from Section 52A of the NDPS Act or the Standing Order(s) / Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. What is required is that the courts take a holistic and cumulative view of the discrepancies that exist in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinize the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.

27. In such circumstances, particularly 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 adequately proving compliance of the same, it would not be appropriate for the courts 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. Similarly,

irrespective of any failure to follow the procedure laid under Section 52A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

28. In *Khet Singh v. Union of India* reported in (2002) 4 SCC 380 this Court held that the Standing Order(s) issued by the NCB and the procedure envisaged therein is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It further observed that there may, however, be circumstances in which it would not be possible to follow these guidelines to the letter, particularly in cases of chance recovery or lack of proper facility being available at the spot. In such circumstances of procedural illegality, the evidence collected thereby will not become inadmissible and rather the courts would only be required to consider all the circumstances and find out whether any serious prejudice had been caused to the accused or not. Further it directed, that in such cases of procedural lapses or delays, the officer would be duty bound to indicate and explain the reason behind such delay or deficiency whilst preparing the memo. The relevant observations read as under: -

“5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the Rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, the courts would take a serious view and the benefit would be extended to the accused. The offences under the NDPS Act are grave in nature and minimum punishment prescribed under the statute is incarceration for a long period. As the possession of any narcotic drug or psychotropic substance by itself is made punishable under the Act, the seizure of the article from the appellant is of vital importance.

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at

the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.” (Emphasis supplied)

29. A similar view as above was reiterated in the decision of **State of Punjab v. Makhan Chand** reported in **(2004) 3 SCC 453** wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

“10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage

space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 27 Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. *Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances. 11. Secondly, when the very same Standing Orders came up for consideration in Khet Singh v. Union of India this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.*" (Emphasis supplied)

30. Thus, from above it is clear that 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 ensure 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. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is

only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s) / Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non-compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in **Noor Aga** (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 28 narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in **Mohammed Khalid** (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in **Mangilal** (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of brining clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in **Noor Aga** (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and does not exhaustively lay down the evidentiary rules for proving seizure or recovery,

nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in **Noor Aga** (supra).

33. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 29 emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

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.

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).

36. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed in contravention of Section 52A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a magistrate, which is now contained in sub-section (4) of Section 52A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

37. Section 52A sub-section (4) should not be conflated as a rule of evidence in the traditional sense, i.e., it should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of 'Primary Evidence' or 'Best Evidence' is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 30 pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a magistrate in substantial compliance of the procedure prescribed. This, however, does

not mean that where Section 52A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the recovery etc. What Section 52A sub-section (4) of the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on par with the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts the manner of proving possession to only one mode i.e., through such certified inventory, photographs or samples such that all other material are said to be excluded from the ambit of 'evidence', rather it can be said that the provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence."

34. Further in Para 41 and 42 of the said judgment of ***Bharat Aambale*** (supra) held that:

"41. As per Clause 2.5 of the Standing Order No. 1 of 89 i.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40 packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under: -

"2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn."

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn, in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant

clause reads as under: -

“2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

35. Learned counsel for the appellant has cited the judgment passed by Hon'ble Supreme Court in the ***Surepally Srinivas vs. State of A.P., 2025 SCC Online SC 683***, in which the non-compliance of Standing order No. 1/89 was considered and the appellant has been acquitted. In the present case the benefit of the judgment of ***Surepally Srinivas*** (supra) cannot be extended as in the present case, the search and seizure of the Ganja from the possession of the accused persons has been proved by the prosecution, and the minor discrepancies does not affect the credibility of the prosecution case or search and seizure of the alleged Ganja from the appellant. From the evidence available in the present case it is clear that the alleged Ganja was seized from the mini truck in which the appellant was occupant, after its seizure it was identified and sealed and homogenization and sampling were done, the seized articles were kept in safe custody of Malkhana and without any further delay the sample packets were sent to FSL from where report has been obtained. There is no suspicious circumstances that appear in the case that create a doubt about the fair procedure in respect of search and seizure. Therefore, no benefit can be extended to the appellant by the judgment of ***Surepally Srinivas*** (supra).
36. In the present case, the entire search and seizure proceeding has been found genuine and correct procedure has been drawn by the police officers when the police officers on secret information went on the spot, the accused persons came on their mini truck, and they were found in possession of Ganja, which was kept in total 7 bags, which were seized by the police under the procedure and provisions of the NDPS Act. Nothing adverse could be found to disbelieve the evidence of the prosecution witnesses, and it is found

proved that the accused persons were found in possession of such a huge quantity of Ganja, i.e, 250.00kg.

37. The appellant was not able to impute any palpable evidence to make good their case that there has been non-compliance with any mandatory provisions of the NDPS Act. Even though the independent witnesses have not supported the prosecution's case, the members of the search and seizure party have duly proved the seizure of Ganja from the accused persons.
38. There is no material available on record to arrive at the finding that the accused persons have been falsely implicated in the case. Section 20 of the NDPS Act provides that whoever, in contravention of any provisions of this Act or any rule made therein, possesses Ganja shall be punished in accordance with the said provisions. Section 20 (b) uses the "possess". In the present case, the accused persons were found in possession of 250.00kg of Ganja in their possession. The judgment passed by the learned trial Court is a quite detailed judgment which has dealt with every aspect of the matter, and the analysis made therein clearly proves that the appellant has committed the offence in question. He could not give any explanation as to how that huge quantity of Ganja came to be found in his possession.
39. The FSL report Ex.-P/41 further proves that the sample packets of Ganja, which were drawn from the total quantity of the Ganja, were found to contain Ganja contents, which further corroborates the allegation against the appellant.
40. In view of the above discussion, this Court is of the considered opinion that the judgment passed by the learned trial Court is based on proper appreciation of evidence which is neither perverse nor contrary to the record as well as the law laid down by the Hon'ble Supreme Court and the same needs no interference, as such, the judgment of conviction and the order of sentence awarded to the appellant is hereby affirmed.

41. Accordingly, the appeal filed by the appellant is hereby **dismissed**.
42. The appellant is reported to be in jail since 06.12.2017. He shall serve the entire sentence awarded by the learned trial Court. The appellant is entitled for set-off of his undergone period during the trial as well as during the pendency of the appeal.
43. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail, where the appellant is undergoing his jail sentence to serve the same on the appellant, informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
44. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Alok