



2025:CGHC:32537-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 383 of 2024**

Mohammad Kalut Mansuli S/o Of Mohamamd Sultan Mansuli Aged About 45 Years Resident Of Of Village B.B. Ganj Chakiya, P.S. Mofasilaam Tahsil And District Aara, Bhojpur (Bihar)

**Appellant(s)**

**versus**

State Of Chhattisgarh Through Station House Officer, Police Station - Komakhan, District- Mahasamund (C.G.)

**Respondent(s)**

**AND**

**CRA No. 358 of 2024**

Mahesh Kumar Paswan S/o Shri Krishna Paswan Aged About 19 Years Resident Of Village Chitkundi Chakiya, P.S. Aam Mofasil, District Aara Bhojpur (Bihar)

**Appellant(s)**

**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station- Komakhan, District-Mahasamund (C.G.)

**Respondent(s)**

**(Cause-title taken from Case Information System)**

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For Appellant(s) : Mr. Vikash Pradhan, Advocate  
For Respondent(s) : Mr. Nitansh Jaiswal, Panel Lawyer

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**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Bibhu Datta Guru, Judge**

**Judgment on Board**

**Per Bibhu Datta Guru, J**

**14/07/2025**

Heard.

1. Since, both the appeals arise out of same Special Criminal (NDPS Act) case No. 24/2020, therefore, they are being heard together and decided by this common judgment.
2. These appeals have been filed by the appellants 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 11/01/2024 passed in Special Criminal (NDPS Act) case No. 24/2020 by learned Special Judge (NDPS Act) District- Mahasamund (C.G.), whereby the learned Special Judge has convicted the appellant 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 20 years rigorous imprisonment with fine of Rs.2,00,000/- in default of payment of fine, additional R.I. for one year.
3. The prosecution case in brief is that on 10.09.2020, Inspector Pradeep Minj (PW14) of Police Station Komakhan received an information from

an informant that a twelve-wheeled truck was bringing a psychotropic substance, ganja, from Odisha to Chhattisgarh. On the said information, after duly preparing the informer information panchnama and search panchnama without warrant, he reached to the spot i.e. village Temri forest naka along with staff and witnesses and conducted a blockade. During the blockade, a truck bearing registration number W.B. 41 H 0832 (*henceforth 'the truck'*) which was coming from Khariyar Road, Odisha was stopped and two persons were found in the truck. On asking, they told their names as Mohammad Kalut Mansuli and Mahesh Kumar Paswan (*henceforth 'the Appellants'*). On interrogating them closely, they told that they were taking the narcotic substance Ganja from Bhawanipatna, Odisha to District Ara in Bihar. While searching the said truck in front of witnesses, total 183 packets, kept in hidden 34 sacks, were found in their joint possession. A recovery panchnama was prepared in the presence of witnesses. The said narcotic substance like Ganja recovered from the truck from the joint possession of the accused was mixed together and some quantity of it was torn, rubbed, smelled and burnt and it was found to be Ganja. Subsequently, the electronic weighing machine was brought to the spot by the weigher Mansingh Baghel, and it was checked and found to be correct. A physical verification panchnama of the weighing machine was prepared. On weighing the illegal narcotic substance Ganja which was recovered from the vehicle in joint possession of the accused at the spot itself and was kept in 183 packets filled in 34 sacks hidden in empty crates in the

container wrapped in khaki coloured membrane in each packet, was weighted to be 913 kilograms, after which two sample of 100 grams each were taken out from the recovered Ganja.

During the process 913 kilograms of narcotic substance Ganja; two sample packets of 100 grams each prepared from it which were recovered from the joint possession of the accused; the truck of the accused; one mobile; and Cash of Rs 2200/- were seized from the joint possession of the accused and a seizure sheet was prepared. A map of the crime scene was prepared.

On finding the evidence of crime against the accused, they were arrested in front of witnesses and an arrest sheet was prepared and their family members were informed about their arrest. After returning to Komakhan police station, a crime was registered against the accused under section 20 (b) NDPS Act under crime number 175/2020 and a First Information Report was recorded. A report of the entire proceedings was prepared and sent to the SDOP office Bagbahara. During the investigation, the statements of the witnesses were recorded. The seized Ganja sample was sent to the Forensic Science Laboratory Raipur for testing. In the test report received from the Forensic Science Laboratory Raipur, it was found to be Ganja. Panchnama and inventory of the proceedings were prepared through the concerned Executive Magistrate. After complete investigation, on finding evidence of crime against the accused, a charge sheet has been filed before the concerned Court.

4. When the charge-sheet was prepared and read out to the accused, they denied the crime and claimed trial. When the accused was examined under Section 313 of the Cr.P.C., they expressed innocence and falsely implicated and expressed desire to give evidence in defence. Later, they expressed innocence and said that they would not give any defence evidence and did not present any defence evidence.
5. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted the appellant and sentenced them as mentioned in the earlier part of this judgment. Hence these appeals.
6. Learned counsel for the appellants 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 basis to convict the appellants for the alleged offence. There are non-compliance of the mandatory provisions of Section 42, 50, 52, 52-A, 55 and 57 of the NDPS Act. There is absolutely non-compliance of the Standing Order of 1/89 issued by the Central Government with respect to the procedure for drawing of the samples and in absence of any proper procedure for drawing the samples, the entire procedure vitiates. Therefore, the appellants cannot be convicted for the alleged offence.
7. On the other hand, learned counsel for the State opposes and have submitted that the entire procedure as prescribed under the NDPS Act

has been followed in its letter and spirit and after considering the evidence available on record, the learned trial Court has rightly convicted and sentenced the appellants for the alleged offence. The appellants were found in possession of the vehicle and the huge quantity of Ganja i.e. 913 kg of cannabis (*Ganja*) was being transported by the appellants and there has been no explanation offered by them as to how they came into the possession of such a huge quantity of cannabis (*Ganja*) in their vehicle. All the mandatory provisions have been duly complied with, therefore, there is no irregularity or infirmity in the impugned judgment passed by learned trial Court and the appeal of the appellant is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
9. Independent witnesses Jitendra Dhiwar (PW-01) and Kanhaiya Lal Dhiwar (PW-02) have stated that they do not know the accused and the police had made them sign some documents. Both the independent witnesses have been declared hostile by the prosecution and have been asked leading questions but the prosecution has failed to collect any substantial evidence in support of its case. Despite the prosecution confronting both these witnesses with the entire contents of their police statements, they have stated that they did not give the said part to the police. Jitendra Dhiwar (PW-01) and Kanhaiya Lal Dhiwar (PW-02) have admitted in cross-examination that they have signed all the

documents together on the instructions of the policeman and the policeman did not read out the above documents to them nor did they read them and the above witnesses have admitted in cross-examination that when they signed, no other person was present except the policeman. Thus, the above two Panch witnesses have not supported the prosecution even for a moment.

10. Mansingh Baghel (PW-12), Weigher, has stated that he does not know the accused and has never seen him before. The incident took place about one year ago when the police of Komakhan police station came to his house and subsequently, he went to the police station, where he made some sign over the documents, however, the police personnel had not told him what was written on it. He denied the proceeding of weight
11. In this way, the prosecution story regarding the action taken at the spot by the *panch* witnesses and the weigher in the case has not been supported. Now, it is worth considering in the case that if the fact of seizure of drug Ganja has not been proved by the independent witnesses, then whether the evidence of the police witnesses presented by the prosecution can be believed. In this regard, it has been held by the Hon'ble Supreme Court in many judicial precedents that if the evidence of police witnesses is worthy of belief then the accused can be convicted on the basis of their reliable evidence also. Similarly, the judicial precedent *Nathusingh Vs. State of Madhya Pradesh* reported in *AIR 1973 SC 2783*, the Hon'ble Supreme Court has opined that there

is no law that the statement of a police officer or excise officer cannot be accepted in the absence of support. If the police officer's single evidence is of such a quality that it cannot be disbelieved, then on the basis of his sole evidence, a conclusion can be drawn about the recovery of something (narcotic substance). In the context of the opinion expressed in the above honorable judicial precedents, it is now to be considered whether as per the evidence in the case, the Investigating Officer has conducted the investigation by following the mandatory and directive provisions of the NDPS Act which is supported by other evidence in the case.

12. The Investigation Officer, Pradeep Minj (PW-14) was posted as Inspector at Police Station, Komakan at the relevant point of time. On 10.09.2020, informer's information was received that a twelve-wheeler truck was bringing Ganja from Odisha to Chhattisgarh. The information received was given to SDOP through phone. Then SDOP gave him directions through phone and after entering the informer's information in Sanha, constable no. 724 Santosh Sanwara was sent with a work certificate to summon two witnesses. Then the constable summoned witnesses Kanhaiya Dhiwar and Jitendra Dhiwar resident Lukupali and brought them to the police station. Then by giving notice of Ex.P. 25 and Ex.P. 01 to the witnesses, they were made aware of the informer's information and informed about the proceedings and informed to be present as a witness during the proceedings and consent was obtained. The notice given to the witnesses Ex.P. 25 and Ex.P. 01 have his



signature on the B to B parts. In the presence of witnesses, he had prepared the document of Informer Information Panchnama Ex.P. 02 and Search without Warrant Panchnama Ex.P. 03, of which parts E to E are signed by him. In the prepared Informer Information Panchnama, the document of Search without Warrant Panchnama was given to constable Vikas Sahu with the instruction to present it before SDOP Bagbahara by giving proof of work and to bring it after providing receipt. Then the constable went to SDOP office and got it registered in the office of the reader present in the office and returned with its receipt and handed over the receipt.

After the action, along with the staff Sub Inspector Kaushal Sahu, Head Constable no. 68 Narendra Sahu, Constable no.. 721, 724, 760, 817, 821 and both the witnesses, in the acquired vehicle Bolero with investigation kit, left for Forest Naka Temri for verification of the informer's information and after reaching Temri Naka, blockade was done and after some time as per the informer's information, a truck number was coming from Khariyar Road, Odisha side bearing registration No. WB-41-H-0832, which was stopped in which two persons were sitting and on asking the driver told his name as Mohammad Kalut Mansuli and the person sitting on the adjacent seat told his name as Mahesh Kumar Paswan. Both the accused were residents of district Ara Bhojpur Bihar and on detailed questioning they told that they were taking the drugs from Odisha to Bihar. After the proceedings, both the accused were informed by giving notice

separately under section 50 NDPS Act in the presence of witnesses that they can get themselves searched by any gazetted officer, any magistrate or the policemen then the accused gave their consent to get themselves searched by them/policemen present. The section 50 notice Ex.P. 04 and Ex.P. 05 have his signature on parts C to C and thumb impression of accused Mohammad Kalut and on parts D to D there is signature of accused Mahesh Paswan. Consent Panchnama Ex. P.-06 has his signature on C to C parts and accused Mohammad Kalut's thumb impression and accused Mahesh Paswan's signature on D to D parts.

Subsequently, the police personnel present on the spot, were given search permission to the accused in the presence of witnesses and on not finding any objectionable property, the police party prepared search Panchnama Ex. P. 07 on C to C parts of which the signature of the police personnel is there and accused Mohammad Kalut's thumb impression and accused Mahesh Paswan's signature on D to D parts. Later on the search of twelve wheeler truck bearing registration no. WB41 H 0832, before the proceedings, 183 packets of narcotic substance like Ganja wrapped in khaki coloured plastic membrane, hidden in between empty plastic crates in 34 sacks, were found. Search panchnama Ex.P. 09 was prepared on which parts C to E bear his signature and thumb impression of accused Mohammad Kalut and parts D to E bear signature of accused Mahesh Paswan.

After the proceedings, the narcotic substance found in the trunk of the vehicle which was in the joint possession of the accused was

recovered and a document of recovery panchnama Ex.P.10 was prepared on which his signature is on parts C to D and thumb impression of accused Mohammad Kalut and signature of accused Mahesh Paswan is on parts D to E. The packets of the recovered narcotic substance were torn and a small quantity was taken out and rubbed and smelled and it appeared to be a psychoactive substance like Ganja. Then Identification panchnama Ex.P.11 was prepared on parts C to D and his signature is on parts D to E and thumb impression of accused Mohammad Kalut and signature of accused Mahesh Paswan is on parts D to E. After the proceedings, notice of section 91 of CrPC was given to both the accused, then it was written by the accused that we do not have any documents for transporting Ganja. Notice of section 91 is Ex.P. 22 on which parts C to D bear his signature and thumb impression of accused Mohammad Kalut and parts D to E bear signature of accused Mahesh Paswan.

13. PW14- Investigating Officer further deposed at para 10 that in respect of the weighing proceeding, constable no. 821 who was present on the spot was instructed to Electric Weighing machine. Subsequently Mansingh Baghel resident of Komakhan was present on the spot with his electronic weighing scale, a notice was given to the weigher which is Ex.P. 42 on whose B to E parts his signature is there. A one kg salt packet was weighed by placing it in the electronic weighing scale and when it was shown to be one kg, the weighing scale was found to be fully charged and correct, physical verification of the weighing scale

was prepared, Panchnama Ex.P. 12 on whose C to F parts his signature is there and thumb impression of accused Mohammad Kalut and on D to E parts signature of accused Mahesh Paswan is there.

After the proceedings, 183 packets of drugs recovered were torn apart and a wide polythene was laid and all the drugs were mixed together and a harmonious Panchnama Ex.P. 13 was prepared on whose C to F parts his signature is there and thumb impression of accused Mohammad Kalut and on D to E parts signature of accused Mahesh Paswan is there. After the proceedings, on the spot itself, in the presence of witnesses, he prepared a sample seal panchnama document Ex.P. 16, on the C to D parts, his signature is there, and thumb impression of accused Mohammad Kalut is there, on D to E parts, signature of accused Mahesh Paswan is there and on E to E parts, three round seals of PS Komakhan are there. After the proceedings, all the drugs were packed in a sack and weighed and it was found to weigh 913 kg. Then he prepared a document called weighing panchnama Ex.P. 14 on which my signature is there on parts D to D and thumb impression of accused Mohammad Kalut and signature of accused Mahesh Paswan on parts E to E. Out of the 913 kg of drugs weighed, two sample boxes of 100 grams of Ganja each were prepared which were marked with articles A-01 and A-02 and were sealed. The remaining 912.800 kg of drugs were sealed in a plastic sack and a document called sample panchnama Ex.P. 15 was prepared on which my signature is there on parts D to E and thumb impression of accused Mohammad Kalut and signature of

accused Mahesh Paswan on parts D to E and a round seal with P.S. Komakhan written on it is affixed on parts E to E. After the proceedings, on the spot itself, in the presence of witnesses, he prepared a sample seal panchnama document Ex.P. 16, on the C to D parts, his signature is there, and thumb impression of accused Mohammad Kalut is there, on D to E parts, signature of accused Mahesh Paswan is there and on E to E parts, three round seals of PS Komakhan are there. After the proceedings, both the accused were searched on the spot itself, then notice under section 50, section 91 was given, on finding mobile phones from both the accused, the search panchnama Ex.P. 18 was prepared.

After the proceedings, the vehicle truck bearing registration no. WB 41 H. 0832, the drugs kept in the bag, mobile, cash amount and vehicle RC book, insurance, was jointly seized from both the accused. After giving them notice of section 50 and section 91 and a document of property seizure form Ex.P. 19 was prepared. Subsequently, he had prepared the crime description map on the spot itself which is Ex.P.17, Before the arrest, the accused persons were informed which is Ex.P.45 and Ex.P.46 respectively. After the proceedings, accused Mahesh Paswan and Mohammad Kalut Mansuli were arrested in presence of witnesses under section 20B NDPS Act and arrest panchnama Ex.P.20 and Ex.P.21 were prepared. After the proceedings, information regarding arrest was given to the family members of both the accused through mobile, which is Ex.P. 47 and Ex.P. 48. The statements of witnesses Mansingh Baghel, Kanhaiya Dhiwar and Jitendra Dhiwar

present on the spot were recorded. On the spot itself, a Dehati Nalsi complaint crime was registered against both the accused under section 20b NDPS Act was registered, which is Ex.P. 49,

Thereafter, he came back to the police station with the drugs, vehicle and other materials recovered from the joint possession of both the accused and on the basis of the Dehati nalsi bearing No. 0/20 registered at the spot, he registered a crime number 175/20 against the appellants under section 20B NDPS Act. The first information report is Ex.P.50. After the proceedings, the truck bearing registration No. WB 41 H 0832, 913 kg of drugs and two samples of 100 grams each were taken out from it, which were marked with article A-01 and A-02 and the remaining drugs were sealed in 23 sacks and one mobile phone, cash amount of Rs. 2200/-, vehicle documents, RC book, insurance, notice of section 50 and section 91 and plastic membrane were handed over to the clerk Rajendra Vyavahar for safekeeping in the store room in a sealed condition. Then the clerk kept the above mentioned items, Ganja and vehicle in the police station premises and the remaining items in the store room and obtained a confiscated material delivery receipt which is Ex.P. 37. After action was taken under Section 20B NDPS Act, the report of the above action was prepared and sent to SDOP office Bagbahara by giving work certificate to constable no. 792 Chummanlal Diwan of the police station. Then the constable went to SDOP office Bagbahara and deposited the post in front of the reader in the absence of SDOP and got the receipt and came back to the police station with the

receipt and gave his arrival which is Ex.P. 20.

Thereafter, on 11.09.2020, a report was written to the Tehsildar Bagbahara to prepare and obtain a sight map of the incident site from the concerned Patwari, which is Ex.P. 51. On 11.09.2020, a report was written to the Sub-Divisional Magistrate Bagbahara to get the action of 52A of the seized narcotics in the above case done by the Executive Magistrate, which is Ex.P. 52, on which parts A to C are signed by him.

14. On 19.09.2020, in the above mentioned crime number 175/20 of police station Komakhan, for 52A action of the seized drug, Executive Magistrate Bagbahara was present in the store room of police station Komakhan and 52A action was taken. He was present during the action and he had prepared a panchnama regarding the action taken by the Executive Magistrate. The panchnama/inventory is Ex.P. 23, on which his signature is on parts 1 to 2. Thereafter, two sample packets of 100-100 grams each of the seized drug, which are article A-01 and A-02, were sent to the Forensic Science Laboratory, Raipur for FSL investigation through constable number 962 Bhagirathi Sinha with the memorandum of Superintendent of Police Mahasamund. Then the constable took the above mentioned samples. After depositing it in the forensic science laboratory, he received an acknowledgment. The memorandum of the police superintendent is Ex.P.34, receipt of exhibit, which is attached to the case and the report and result of the exhibit sent was received by the police station through the Superintendent of Police,

Mahasamund. The test result report is Ex.P.53, whose test result was found to be Ganja in articles A-01 and A-02, which is attached to the case. At para 27, this witness has deposed that today he has brought with him two sample boxes of 100 grams each, seized from the accused in crime case no. 175/22 which were received after testing. Both the samples are wrapped with jute rope and khaki coloured paper on which the FSL sample seal is affixed. Article A-01 is written in the sample box and below it is N/468/2022 S.P. Mahasamund P.S. Komakhana and crime number 175/2022 is written outside the box and in the second sample box, article A-02 is written below it is N/468/20 S.P. Mahasamund P.S. Komakhana and crime number 175/20 is written. The jute rope of both the boxes was cut and opened and a paper is pasted on a plastic box, in which N/468/20 is written outside the packet and in the other packet N/469/20 S.P. Mahasamund P.S. Komakhana and crime number 175/20. The name of the accused and the date of seizure 23.11.2022 is mentioned and the seal of Forensic Science Laboratory Raipur is affixed.

15. In cross-examination, he admitted that on 10/09/2020 at about 09:20, he had received the secret information regarding transportation of contraband. He also admitted that the search panchnama was prepared in respect of the truck. He admitted that within 20-25 minutes of receiving information, he had reached to the spot. He admitted that notice under Section 91 was given to the appellants. This witness admitted that all the proceedings have been done by him in the format



which has the signatures of the accused and the witnesses. It is wrong to say that fake proceedings have been done against the accused by merely taking the signatures of the witnesses while sitting in the police station.

16. Section 43 of the NDPS Act provides the powers of seizure and arrest in public place which towards as under:

**[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.]

17. The facts of the case as well as evidence available in the case makes it clear that the vehicle was being stopped near Forest Barrier, Temri. While checking the vehicle, it was found contained with cannabis (*Ganja*). Admittedly it was being checked on the public place i.e. on the main road that too without any prior information and the said cannabis (*Ganja*) was seized /recovered in transit which was being carrying by the accused person, who was driver of the vehicle. Therefore, the issue of non-compliance of Section 42 is not applicable in the present case and the police authority have acted under Section 43 of the NDPS Act. Section 43 of the NDPS Act, when the place of occurrence was a public road and accessibility to the public and fell within the ambit of the public place.
18. In view of the provisions of explanation to Section 43, the Section 42 of the NDPS had no application.
19. The contraband were recovered and seized while in transit. As the contraband were recovered and seized during transit in the truck vehicle, as contemplated in Section 43(a) i.e. "Seize 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.

20. In the matter of *Firdoskhan Khurshidkhan vs. State of Gujarat and Another* dated 30.04.2024 reported in *2024 SCC OnLine SC 680* has held in para 18 as under:

"18. Section 42 of the NDPS Act deals with search and seizure from a building, conveyance or enclosed place. When the search and seizure is effected from a public place, the provisions of Section 43 of the NDPS Act would apply and hence, there is no merit in the contention of learned counsel for the appellants that non-compliance of the requirement of Section 42(2) vitiates the search and seizure. Hence, the said contention is noted to be rejected."

21. In the matter of *State of Haryana vs. Jarnail Singh and Others* reported in *2004 (5) SCC 188* in Para 9 and 10 of its judgment the Hon'ble Supreme Court has held that:

"9. Sections 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle

between sunset and the sunrise.

**10.** In the instant case there is no dispute that the tanker was moving on the public highway when it was stopped and searched. Section 43 therefore clearly applied to the facts of this case. Such being the factual position there was no requirement of the officer conducting the search to record the grounds of his belief as contemplated by the proviso to Section 42. Moreover it cannot be lost sight of that the Superintendent of Police was also a member of the searching party. It has been held by this Court in *M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence* : (2003) 8 SCC 449 that where a search is conducted by a gazetted officer himself acting under Section 41 of the NDPS Act, it was not necessary to comply with the requirement of Section 42. For this reason also, in the facts of this case, it was not necessary to comply with the requirement of the proviso to Section 42 of the NDPS Act."

22. In the matter of *Kallu Khan vs. State of Rajasthan* reported in **2021 (19) SCC 197** in Para 12, 13 and 16 of its judgment the Hon'ble Supreme Court has held that:

12. After hearing and on perusal of record and the evidence brought, it is apparent that on apprehending the accused, while making search of the motor cycle, 900 gm of smack was seized to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this

Court in S. K. Raju (supra) and S.K. Sakkar (supra). However, the recovery made by Pranveer Singh (PW6) cannot be doubted in the facts of this case.

13. Now reverting to the contention that the motor cycle seized in commission of offence does not belong to accused, however seizure of the contraband from the motor cycle cannot be connected to prove the guilt of accused. The Trial Court on appraisal of the testimony of witnesses, Constable Preetam Singh (PW1), Constable Sardar Singh (PW2), S.I. Pranveer Singh (PW6) and Constable Rajendra Prasad (PW8), who were members of the patrolling team and the witnesses of the seizure, proved beyond reasonable doubt, when they were on patrolling, the appellant came driving the seized vehicle from opposite side. On seeing the police vehicle, he had taken back the motor cycle which he was riding. However, the police team apprehended and intercepted the accused and made the search of vehicle, in which the seized contraband smack was found beneath the seat of the vehicle. However, while making search at public place, the contraband was seized from the motor cycle driven by the accused. Thus, recovery of the contraband from the motor cycle of the appellant was a chance recovery on a public road. As per Section 43 of NDPS Act, any officer of any of the departments, specified in Section 42, is having power of seizure and arrest of the accused from a public place, or in transit of any narcotic drug or psychotropic substance or controlled substance. The said officer may detain in search any person whom he has reason to believe that he has committed an offence punishable under the provisions of the NDPS Act, in case

the possession of the narcotic drug or psychotropic substance appears to be unlawful. Learned senior counsel representing the appellant is unable to show any deficiency in following the procedure or perversity to the findings recorded by the Trial Court, affirmed by the High Court. The seizure of the motor cycle from him is proved beyond reasonable doubt, therefore, the question of ownership of vehicle is not relevant. In the similar set of facts, in the case of Rizwan Khan (*supra*), this Court observed the ownership of the vehicle is immaterial. Therefore, the argument as advanced by learned senior counsel is of no substance and meritless.

23. The next submission of the learned counsel for the appellant 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 as provided under Section 50 of the NDPS Act. The provisions of Section 50 is applicable to the present search of the accused persons whereas in the present case the cannabis (*Ganja*) was recovered from the vehicle driven by accused person which cannot said to be his personal search. The search of a vehicle does not comes under the requirement of Section 50 of the NDPS Act and search of a person is distinguished from search of any vehicle etc.

In the matter of ***Kallu Khan*** (*supra*) the Hon'ble Supreme Court has also considered the applicability of Section 50 of NDPS Act in search of the vehicle. In Para 16, the Hon'ble Supreme Court has held that:

"16. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of *Vijaysinh* (supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of *Surinder Kumar* (supra) and *Baljinder Singh* (supra). Considering the facts of this Court, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled."

24. 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."

25. 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*<sup>11</sup>, 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."

26. The next submission made by learned counsel for the appellant is that Section 52 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.
27. Investigating Officer/Inspector Pradeep Minj (PW-14) has stated that on 11.09.2020, a report was written to the Sub-Divisional Magistrate Bagbahara to get the action of 52A of the seized narcotics in the above case done by the Executive Magistrate, which is Ex.P. 52, on which parts A to C are signed by him. On 19.09.2020, in the above mentioned crime number 175/20 of police station Komakhan, for 52A action of the seized drug, Executive Magistrate Bagbahara was present in the store room of police station Komakhan and 52A action was taken. He was present during the action and he had prepared a panchnama regarding the action taken by the Executive Magistrate. The panchnama/inventory is Ex.P. 23, on which his signature is on parts 1 to 2. Thereafter, two

sample packets of 100-100 grams each of the seized drug, which are article A-01 and A-02, were sent to the Forensic Science Laboratory, Raipur for FSL investigation through constable number 962 Bhagirathi Sinha with the memorandum of Superintendent of Police Mahasamund.

28. Naib Tehsildar, Ram Khilawan Verma (PW-06) also supported the statements of Investigation Officer/Inspector and stated that he was posted as Naib Tehsildar in Tehsil Office, since 17/07/2019. On the directions of Sub-Divisional Magistrate, Bagbahara, he went to Police Station Komakhan on 19/09/2020 for action under Section 52 of NDPS Act and in front of him, the seized Ganja kept in sealed condition in 33 sacks, the total weight of which was mentioned to be 911 kg, from which two samples of 100 grams each were taken out and the remaining Ganja was found to be separately sealed and kept in the Malkhana Komakhan, which was taken out of the Malkhana in front of two witnesses. After physical verification of the electronic scale, on weighing, the total weight of all the narcotics including the sacks was found to be 911 kg, from which a Ganja sample of 100 grams was taken out from sack kept separately in a plastic box and sealed and kept back, and the remaining narcotics were kept separately in a sack and returned to the Malkhana after affixing a signature slip.
29. Investigating Officer/Inspector Pradeep Minj (PW-14) has admitted in paragraph 42 of the cross-examination that he had initiated the proceedings under Section 52A. It was not conducted before a judicial

magistrate. In the said paragraph of cross-examination, the said witness has denied the fact that no goods were recovered from the accused, hence photographs of the entire goods and sample were not taken. Ramkhilavan Verma (PW-06) has admitted in paragraph 06 of cross-examination that he had physically verified the weighing scale before the weighing proceedings. In paragraph 07 of the cross-examination, the said witness has admitted that the Panchnama of Ex.P.-23 was prepared by Inspector Pradeep Minj through his staff in his presence. In paragraph 08 of cross-examination, the said witness has admitted that the witnesses in Ex.P.-23 had signed in his presence. No other important fact has come to light in the cross-examination of the said two witnesses due to which their statements can be disbelieved. The statements of the said witnesses are also confirmed by the seized goods register of Ex.P.-38C. The defence has based its case on the non-conduct of proceedings under Section 52A by the judicial magistrate. This case has been initiated by the investigating officer on 10.09.2020 and the amendment in the NDPS Act is effective from 23.12.2022, hence, non-conduct of proceedings under Section 52A by the judicial magistrate does not have any adverse effect on the case, hence the basis taken by the defence in this regard is also not acceptable. In the case, no contradiction of any kind has been found in the statements of the investigating officer/inspector Pradeep Minj (PW-14), Ramkhilavan Verma (PW-06). No such important fact has come to light in the cross-examination of the said witnesses due to which their statements can be disbelieved. The

statements of the above two witnesses are also confirmed by the Panchnama/Inventory Ex.P.-23, physical verification of 52A-3 Ex.P.-31 and photographs Article A-1. Thus, on the above grounds, it is also shown that the provisions of Section 52A NDPS Act were followed in the case.

30. Investigation Officer/Inspector Pradeep Minj (PW 14) has stated that after the action was taken under Section 20B NDPS Act, the report of the above action was prepared and sent to the SDOP office Bagbahara by giving the work certificate to the constable of the police station, C. 792 Chummanlal Diwan. Then the constable went to the SDOP office Bagbahara and in the absence of SDOP sahab After depositing the post and getting the receipt, he came back to the police station with the receipt and gave his arrival which is Ex.P. 35, on which his signature is on all parts. Chummanlal Deewan (AP-08) has stated that he was posted as constable No. 792 in Police Station Komakhan from the year 2019 to 2021, and is currently posted as constable in Police Station Bagbahara. On 11.09.2020, he was directed by giving proof of work to deposit the post of the report of entire proceedings under Section 20b NDPS Act in crime number 175/20 of Police Station Komakhan and get the receipt and bring it. He went to the SDOP office in Bagbahara and handed over the post to the SDOP in the absence of SDOP sahab. He had deposited the post in front of the office reader and received the receipt in one copy and along with the receipt, he came to his police station and reported his arrival. The work certificate given to him for this work is Ex.P. 35, on

which his signature is on parts A to A.

31. Shobharam Bervanshi (PW-05) has stated that on 11.09.2020, the post of the report of the entire action taken in the crime number 175/20 section 20 NDPS Act of police station Komakhan was brought to the office by constable no. 792 Chumman Lal Diwan of the police station and presented, which he received and gave an acknowledgment by putting his signature and office seal in one copy. The report of the entire action is Ex.P. 29, on which his signature is on parts A to A and on parts B to B, the seal of the office of the Sub-Divisional Officer is affixed, in which number and date are mentioned. Both the above proceedings have been entered in the serial number 31 and 31A of the incoming and outgoing register of the office. He has brought the original incoming and outgoing register with him, which is Ex.P.30 and the verified Ex.P.30C attached in the case. Litesh Singh (PW-11) has stated that in the crime number 175/20 of the above case of police station Komakhan, all the action taken under section 20B NDPS Act was prepared and the report Ex.P.29 was prepared by constable K. 792 Chumman Lal Diwan of the police station on 11.09.2020 by submitting the documents before the reader in his office and received the receipt. Later on his arrival in the office, the reader presented all the above received documents before him for his perusal.
32. The another submission made by learned counsel for the appellant is the procedure prescribed in the Circular 1/89 issued by the Central

Government has not been followed and the samples have been drawn in a defective manner. The public authorities should have drawn sample from each of the packets before homogenization or they should have drawn the sample from the packets seized from the vehicle randomly but the procedure drawn by the police that first they have homogenized the entire quantity of cannabis (*Ganja*), therefore, drawing of 2 samples of 100gm each is the defective procedure which vitiates the entire search proceedings. Though it reflect from the evidence available on record that when the police stopped the vehicle they found the cannabis (*Ganja*) kept in 15 bags, containing 16 packets in each bag, a total of 240 packets and other 110 packets were found in the iron chamber in the rear compartment of the alleged vehicle. On the spot it was homogenized and then 2 samples of 100 gm each were drawn. Though the procedure is laid down in the Standing order 1/89 for drawing of the sample but merely non-compliance of the procedure for drawing of the sample does not vitiates the entire search and seizure proceedings when other evidences have duly supported the prosecution case that the cannabis (*Ganja*) was seized from the possession of the appellant. The Standing Order 1/89 is guideline for drawing of the sample.

33. 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.

34. 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 subsection (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 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 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 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 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.

35. 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.”*

36. In the present case the entire search and seizure proceedings have found genuine and the correct procedure have been drawn by the police persons. Though the independent witnesses and weighing witness have not supported the case of prosecution, but the seizure of cannabis (*Ganja*) and its weight and sampling were proved by Investigating Officer and the Naib Tahsildar/Executive Magistrate and nothing adverse could be found to disbelieve their evidences which further proves that the appellant was found in possession of such a huge quantity of cannabis (*Ganja*) in his vehicle. The appellant did not able to impute any palpable to make good his case that there has been non-compliance of any mandatory provisions of the NDPS Act.
37. There is no material available on record so as to arrive at finding that the accused person has been falsely implicated in this case. Section 20 of the NDPS Act provides that whichever in contravention of any provisions of this Act or any rule made therein possess cannabis (*Ganja*) shall be punished in accordance with the said provisions. Section 20 (b) uses the "possess". In the present case the appellant was found in possession of 700 kg of cannabis (*Ganja*) in Bolero vehicle which he

was driven by him at the relevant time. The judgment passed by learned trial Court is quite detailed judgment which has dealt with every aspect of the matter and the analysis made therein clearly proves the appellant has committed the offence in question and was transporting cannabis (*Ganja*) weighing 700 kg. He could not given any suggestion as to how that huge quantity of cannabis (*Ganja*) came to be found in the vehicle in which he was travelling.

38. The FSL report Ex.-P/53 further proves that the sample packets of cannabis (*Ganja*) which were drawn from the total quantity of cannabis (*Ganja*) were found to be contained with cannabis (*Ganja*) contents and further corroborates the allegation against the appellant.
39. In view of the above discussion, this Court is of the considered opinion that the judgment passed by learned trial Court is based on proper appreciation of evidence which is neither perverse nor contrary to the record as well as law laid down by the Hon'ble Supreme Court and the same needs no interference as such the judgment of conviction and order of sentence awarded to the appellant is hereby affirmed.
40. In the result, both the appeals filed by the appellant are hereby **dismissed**. The appellants are reported to be in jail. They shall serve the remaining period of jail sentence as has been awarded to them by the learned trial Court.
41. 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.

42. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-  
**(Bibhu Datta Guru)**  
**Judge**

Sd/-  
**(Ramesh Sinha)**  
**Chief Justice**

Head Note

Irrespective of any failure to follow the procedure laid u/S 52-A NDPS Act, if evidence inspires confidence & satisfies the Court regarding recovery & possession of contraband then the Court can proceed for conviction of accused.