



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1561 OF 2014

ABDUL RAJIK **....APPELLANT(S)**

VERSUS

STATE OF M.P. **....RESPONDENT(S)**

WITH
CRIMINAL APPEAL NO(S). 1562 OF 2014

GOVIND **.....APPELLANT(S)**

VERSUS

STATE OF M.P. **....RESPONDENT(S)**

J U D G M E N T

Mehta, J.

1. Heard.
2. The instant appeals arise from the judgment dated 26th November, 2010 passed by the High Court of Madhya Pradesh at Jabalpur¹ in Criminal Appeal Nos. 1860 of 2006 and 2104 of 2006, whereby the

¹ Hereinafter referred to as “High Court”.

appeals preferred by the appellants² came to be dismissed and the judgment of conviction and order of sentence dated 5th September, 2006 passed by the Special Judge (NDPS), Jabalpur³, in Special Criminal Case No. 1 of 2005, came to be affirmed.

3. The accused-appellants were convicted and sentenced as under:

Criminal Appeal No.	Preferred by	Convicted under Section	Sentence to
1860 of 2006	Govind	8 read with 20(b)(ii)(B) of the Narcotics Drugs and Psychotropic Substances Act, 1985 ⁴	Undergo Rigorous Imprisonment for 8 years and to pay fine of Rs. 80,000/- and in default, to undergo Rigorous Imprisonment for 1.5 years.
2104 of 2006	Abdul Rajik	8 read with 20(b)(ii)(C) of the NDPS Act	Undergo Rigorous Imprisonment for 10 years and to pay fine of Rs. 1,00,000/- and in default, to undergo Rigorous Imprisonment for 2 years.

² Hereinafter referred to as “accused-appellants”.

³ Hereinafter referred to as the “trial Court”.

⁴ For short, “NDPS Act”.

Brief facts

4. The prosecution case, in brief, is that on 29th November, 2004 at about 12:35 p.m., Inspector Rajesh Tiwari (PW-7)⁵, then posted as Station House Officer, Police Station Gorakhpur, Jabalpur District, claims to have received credible information that two persons, one of whom was disabled, were carrying *charas* in bags and had alighted from an autorickshaw near Bandariya Tiraha, Jabalpur. The inspector/seizure officer (PW-7) recorded the information in the *Roznamcha* at Serial No. 2397, prepared the requisite *panchnama* and forwarded the information to the City Superintendent of Police, Gorakhpur, Jabalpur District. The *Panch* witnesses, Mohan (PW-3) and Amit Sonkar (PW-5) were thereafter engaged with the raiding party.

5. The raiding party proceeded to Bandariya Tiraha, where the suspects were allegedly found standing on the road, each carrying a bag. Upon enquiry, they disclosed their identities as Abdul Rajik and Govind, *i.e.*, the appellants herein. Upon search of the bags being held by the suspects, black wick-

⁵ Hereinafter referred to as "Inspector/Seizure officer".

shaped material, wrapped in polythene, was found. A preliminary physical examination of the substance was conducted at the spot by burning a small piece and it was suspected to be *charas*. The substance recovered from the bag of Abdul Rajik weighed 1 kilogram, whereas the substance recovered from the bag of Govind weighed 800 grams. Accordingly, seizure memo was prepared, samples were drawn and the accused-appellants were arrested.

6. Consequent to the search and seizure, First Information Report No. 949 of 2004 came to be registered on 29th November, 2004 at about 5:45 p.m., at Police Station Gorakhpur, Jabalpur District for the offences punishable under Sections 8, 18, 20 and 21 of the NDPS Act. Investigation was conducted and upon conclusion thereof, Chargesheet No. 897 dated 26th December, 2004 came to be filed before the Special Court (Narcotics), Jabalpur.

7. The prosecution case further is that the samples were forwarded to the Forensic Science Laboratory, Sagar⁶, and a report (Exhibit P-46) was received concluding that the samples were of *charas*.

⁶ For short 'FSL'.

8. Charges were framed for offences under Section 8 read with Section 20(b)(ii)(C) of the NDPS Act against Abdul Rajik, and under Section 8 read with Section 20(b)(ii)(B) against Govind. Both pleaded not guilty and claimed trial. The prosecution examined 8 witnesses and relied upon relevant documentary evidence. Upon being confronted with the circumstances appearing against them in the prosecution evidence, the accused-appellants denied the allegations and claimed innocence. In defence, they examined 5 witnesses. It is pertinent to note that Mohan (PW-3) and Amit Sonkar (PW-5), the *Panch* witnesses associated with the seizure proceedings, did not support the prosecution case and were declared hostile. The prosecution, however, relied upon the evidence of the police officials, particularly of Inspector/seizure officer (PW-7), to establish the search and seizure proceedings and the subsequent steps of investigation. The trial Court accepted the prosecution version and held that 1 kilogram of *charas* had been recovered from the bag possessed by Abdul Rajik and 800 grams from the bag possessed by Govind.

9. Upon conclusion of the trial, the trial Court, *vide* judgment and order dated 5th September, 2006 proceeded to convict and sentence the accused-appellants as indicated above.⁷

10. Being aggrieved, the accused-appellants preferred separate appeals before the High Court which came to be dismissed *vide* common judgment dated 26th November, 2010. The said judgment is under challenge in the present appeals by special leave preferred by the accused-appellants.

Submissions of the parties

11. Learned counsel representing the accused-appellants vehemently and fervently urged that the conviction of the appellants as recorded by the trial Court and affirmed by the High Court is unsustainable in the eyes of law. The prosecution has failed to prove the recovery of contraband from the possession of the accused-appellants by leading credible evidence.

12. It was further submitted that mandatory provisions of Sections 42, 50, and 52-A of the NDPS

⁷ Para 3.

Act were not followed and hence, the conviction of the accused-appellants deserves to be set aside.

13. In the alternative, it was urged that the contraband recovered from the accused-appellants falls within the category of intermediate quantity and, therefore, the Courts below were not justified in imposing the maximum sentence of 10 years upon them. Learned counsel submitted that, having regard to the nature and quantity of the contraband involved and the facts and circumstances of the case, the sentence imposed is unduly harsh and disproportionate. It was, accordingly, prayed that, in the event this Court upholds the conviction, the sentence imposed upon the accused-appellants may be suitably reduced and confined to the period already undergone by them.

14. Learned counsel appearing for the respondent-State, on the other hand, opposed the submissions advanced by learned counsel for the accused-appellants. It was urged that Inspector/seizure officer (PW-7) and the other members of the police team had no reason whatsoever to falsely implicate the accused-appellants. The consolidated weight of the contraband recovered from the accused-

appellants weighs well above the commercial quantity. Credible evidence was led by the prosecution to prove that the mandatory provisions of NDPS Act were duly complied with. Learned counsel further urged that the trial Court as well as the High Court have thoroughly appreciated the evidence and recorded the conviction of the accused-appellants by duly analysing the material available on record and thus, the impugned judgments do not suffer from any infirmity warranting interference by this Court.

Analysis and Conclusion

15. We have heard learned counsel for the accused-appellants as well as learned counsel appearing for the respondent-State and have carefully considered their respective submissions. We have also carefully perused the impugned judgments and examined the material available on record.

16. Suffice it to say that, as the recovery was made from bags being carried by the accused-appellants who were apprehended from an open public place, neither Section 42 nor Section 50 of the NDPS Act would apply to the search and seizure made by the Inspector/seizure officer (PW-7).

17. The seizure was effected by Inspector Rajesh Tiwari (PW-7) who stated that he apprehended the accused-appellants, namely, Abdul Rajik and Govind, while they were carrying *charas* in the bags held by them. According to the seizure officer (PW-7), the bags carried by the accused-appellants were searched and were found to contain a sticky substance in a wick-like shape, which was suspected to be *charas*. The substance recovered from the bag carried by Abdul Rajik weighed 1 kilogram, whereas the substance recovered from the bag carried by Govind weighed 800 grams. It is, however, relevant to note that neither the seizure memo nor the deposition of the witness (PW-7) specified whether the aforesaid weights represented the gross weight of the substance, including the packing material, or the net weight of the contraband.

18. We now turn to the question of link evidence, which is essential to establish the integrity and sanctity of the samples allegedly drawn from the seized contraband. The Inspector/seizure officer (PW-7) while deposing about the procedure adopted for drawing and sealing the samples from the

contraband seized from the possession of the accused-appellants, stated as follows: -

“12. Two representative samples of 25 grams each were drawn from respective quantities of the property seized from the accused persons. Sample Panchnama of Abdul Rajik was P-23, C to C part of which bears my signature and thumb impression of the accused. Sample Panchnama of the property seized from Govind Khare is Ex. P-24, C to C part of which bears my signature and D to D part bears signature of accused Govind. Remaining material was also sealed respectively in separate packets. The panchnama of the seal by which material was sealed is Ex. P- 25, C to C part of which bears my signature; D to D part bears accused Govind Khare's signature and E to E part bears specimen seal. Thumb impression of Abdul Rajik was marked on it.”

19. The Inspector/seizure officer (PW-7) further deposed regarding the seized packets of contraband and the samples produced before the Court, describing them in the following terms: -

“18. Seized packets of charas were opened in the Court after being called from the Treasury. Witness has stated that 950 gm of packet has been seized from Abdul Rajik which is marked as "A" and second packet containing 750gms of charas alleged to be seized from accused Govind is marked as B. Two large samples were marked as "C" and "D" and two small samples were marked as "E" and "F" respectively. On opening the "D" sample, a nylon bag of yellow, red, blue colored stripes and one polythene bag were found. Similarly, on opening the "C" article, a polythene bag and a nylon bag of brown, orange-colored stripes were found.”

20. A careful consideration of the aforesaid extracts from the testimony of the Inspector/seizure officer (PW-7) gives rise to serious concerns regarding the identification and integrity of the samples allegedly drawn from the seized contraband. While describing the procedure for drawing and sealing the samples, the witness (PW-7) did not state that the sample packets were sealed by him or that any identifiable marks, such as the signatures or thumb impressions of the accused-appellants, the *panch* witnesses or the seizure officer (PW-7), were affixed to the sample packets themselves. Significantly, when the *muddamal* articles were produced before the Court during the evidence of the seizure officer (PW-7), the sample packets were not separately produced or exhibited.

21. We have carefully perused the sample *Panchnama* (Exhibit P-23), under which the samples were drawn from the substance seized from accused Abdul Rajik and Exhibit P-24, under which the samples were drawn from accused Govind. On a perusal of the said *Panchnamas*, wherein reference is made to the procedure for extraction of the samples, we find that there is no indication in the memos that

the sample packets were secured under the signatures of the Inspector/seizure officer (PW-7), the *panch* witnesses and the accused-appellants, or that any chits bearing particular identification marks were affixed to the sample packets so as to enable their subsequent identification and correlation with the contraband seized from the respective accused.

22. In order to double-check whether the sample packets bore the signatures/thumb impressions of the accused-appellants or any other identifying marks whereby the same could be connected to the particular accused, we carefully perused the FSL report (Exhibit P-46), wherein also there is no reference to the sample packets bearing the signatures/thumb impressions of the accused-appellants.

23. The *maalkhana* in-charge, Ramnath Pandey (PW-2), in his deposition, stated that the Inspector/seizure officer (PW-7), handed over the *charas* packets and the sample packets to him for being deposited in the *maalkhana* on 29th November, 2004. The witness (PW-2) proved the corresponding *maalkhana* register entry (Exhibit P-2) and the photocopy thereof (Exhibit P-2C).

24. The witness (PW-2) remained totally silent during his examination-in-chief regarding the forwarding/fate of the samples. In cross-examination, he stated that on 6th December, 2004, sample packets were sent to the FSL for scientific/chemical examination. A Constable from the police station took the samples to the FSL. A draft was prepared at the Office of Superintendent of Police and then the samples were sent for examination.

25. Thus, apparently, the witness (PW-2) did not refer to any document prepared at the police station for forwarding the samples to the FSL. Furthermore, the witness also did not state that the samples remained safe and in sealed condition till the date they were forwarded to the FSL.

26. Akhil Verma (PW-8) was posted as Sub-Inspector at Police Station, Gorakhpur. He gave evidence regarding the registration of the FIR against the accused-appellants and the subsequent steps taken by him during the investigation. He also stated that the samples of *charas* seized from the accused-appellants were sent to FSL for examination *vide* Draft Exhibit P-45 of the Office of Superintendent of Police. The report of examination was received and

was proved as Exhibit P-46. However, he was totally silent as to the date on which the samples were forwarded.

27. Ramnath Pandey (PW-2) exhibited the *maalkhana* register (Exhibit P-2C) for proving the deposit of the *muddamal* articles. A careful perusal of the said document makes it clear that, though the same records the entry regarding deposit of the samples on 29th November, 2004, no corresponding entry exists in the *maalkhana* register regarding the exit of the samples from the police station for being carried to the FSL. Apparently, thus, none of the witnesses examined by the prosecution stated about the sanctity, safekeeping, or condition of the samples in oral evidence nor did the prosecution prove any document, *viz.*, the forwarding letter of the police station, the road certificates, etc., which are essential documents pertaining to the link evidence necessary for lending credence to the prosecution case regarding safe custody of the samples from the time of seizure till the same reached the FSL.

28. The only document produced by the prosecution evidencing the transit of the samples was the forwarding letter prepared at the Office of

Superintendent of Police (Exhibit P-45) which bears the date 1st December, 2004 and names Constable Ramkrishna, Badge No. 414, as the carrier of the samples. However, as noticed above, there is no evidence on record to establish the movement of the samples from the *maalkhana* at Police Station Gorakhpur for being carried to the FSL, Sagar, on 1st December, 2004. The prosecution has thus failed to account for the custody and movement of the samples from the date of deposit in the *maalkhana* and their eventual receipt at the FSL.

29. There is yet another material inconsistency in the prosecution case which further undermines the prosecution's case regarding the chain of custody. The forwarding letter issued from the Office of Superintendent of Police (Exhibit P-45) bears the date 1st December, 2004 whereas the FSL report (Exhibit P-46) records that the samples were received through Constable Ramkrishna on 6th December, 2004. Even Ramnath Pandey (PW-2) in his oral evidence, stated that the samples were sent to the FSL on 6th December, 2004. The prosecution has offered no explanation whatsoever as to where and in whose custody the samples remained during the period

between 1st December, 2004 and 6th December, 2004. This grave discrepancy and the gap of five (5) days, completely breaches the link in the chain of custody, which was required to be established if the prosecution was desirous of placing reliance on the FSL report (Exhibit P-46). However, neither was the carrier Constable Ramkrishna examined in evidence nor did the prosecution offer any plausible explanation for the discrepancy referred to *supra*.

30. It is trite that the prosecution has to prove, by proper link evidence, that the samples extracted by seizure officer from the recovered contraband were properly sealed and remained in safe and secure condition from the time of seizure till their receipt at the FSL. Needless to say, for the FSL report to be admitted in evidence, the prosecution would have to establish, by credible oral and documentary evidence, the complete chain of custody essential to establish the integrity and sanctity of the samples. Additionally, the procedural safeguard provided under Section 52-A of the NDPS Act is also a relevant factor while evaluating whether the prescribed procedure was duly followed and, if not, the effect of

such non-compliance on the finding of guilt recorded against the accused-appellants.

31. We may note that this Court, in ***Narcotics Control Bureau v. Kashif***⁸ and in ***Bharat Aambale v. State of Chhattisgarh***,⁹ has held that mere non-compliance of the procedure provided under Section 52-A of the NDPS Act or the Standing Orders/Rules made thereunder may not, by itself, vitiate the trial or result in an automatic acquittal. The determinative factor would be whether, and to what extent, such non-compliance has caused prejudice to the accused. Section 52-A of the NDPS Act was incorporated in the Act with the object of providing a statutory mechanism to eliminate the possibility of investigational taint in the procedure of drawing of samples and to ensure expeditious disposal of seized narcotic drugs. Under this provision, the Investigating Agency is obligated to present the seized contraband before the Executive Magistrate/Judicial Magistrate, who is required to cause the representative samples to be drawn in his presence and certify the correctness of the inventory so

⁸ (2024) 11 SCC 372

⁹ (2025) 8 SCC 452

prepared, the photographs taken thereof and the list of samples so drawn. Upon such certification, the inventory, photographs and list of samples may be treated as primary evidence of the seized goods, thereby obviating the necessity of producing the *muddamal* before the trial Court.

32. This Court has held that minor lapses or procedural delay in compliance with the said provision may not, by itself, result in an automatic acquittal. However, total non-compliance would definitely be a relevant factor to be taken into account while assessing the mandatory requirement of proving that the samples were kept in a safe and secure condition, *i.e.*, the link evidence from the time of seizure till the time the samples came to be deposited in the FSL.

33. Having gone through the evidence led by the prosecution, we find that no effort whatsoever was made by the Inspector/seizure officer (PW-7) to undertake the procedure provided under Section 52-A of the NDPS Act for drawing representative samples in presence of a Magistrate and thus, there is total non-compliance with the said provision.

34. This Court, in ***Nadeem Ahamed v. State of West Bengal***¹⁰, held that the failure to draw representative samples in the presence of a Magistrate and the absence of a certified inventory, in breach of Section 52-A of the NDPS Act, constituted lapses striking at the very root of the prosecution case and rendered the integrity of the seizure and sampling process wholly doubtful. Consequently, the FSL report was held unfit to be read in evidence. Likewise, in ***State of Rajasthan v. Tara Singh***¹¹, this Court affirmed an acquittal where the prosecution had failed to account for the custody of the seized samples between their alleged dispatch and their receipt at the laboratory. The Court emphasised that, having regard to the severity of the penalties prescribed under the NDPS Act, the questions as to how and where the samples were stored and when they were dispatched and received at the laboratory assume considerable significance. The Court held that an unexplained gap in the custody of the samples, compromises their sanctity and casts a serious doubt on the prosecution case.

¹⁰ 2025 SCC OnLine SC 1779.

¹¹ (2011) 11 SCC 559.

These decisions, therefore, underscore that the prosecution must establish the integrity of the sampling process as well as an unbroken chain of custody of the samples before the FSL report can safely be relied upon.

35. Applying the aforesaid principles laid down by this Court to the facts of the present case, it is clear that the link evidence has been totally breached leading total collapse of the sanctity and integrity of the samples. Resultantly, the FSL Report (Exhibit P-46) loses its significance and must be discarded from consideration. Once the FSL report is excluded from consideration, there is no other legally admissible evidence available to establish that the substance allegedly recovered from the accused-appellants was *charas* within the meaning of Section 2(iii)(a) of the NDPS Act so as to attract the penal consequences under Section 20 thereof. In the absence of such foundational evidence, the prosecution has failed to establish an essential ingredient of the offence and, consequently, the conviction of the accused-appellants cannot be sustained.

36. The story set up in the testimony of the Inspector/seizure officer (PW-7), that the suspected

contraband was tested by burning a part thereof and that, on the basis of such test, the said officer could conclude that the substance was *charas*, is also unworthy of credence. There is no scientific material on record to establish that the nature or identity of the contraband could be determined as *charas* merely by burning a part thereof. Thus, in the absence of any scientific or other reliable material supporting such an identification, the testimony of the witness (PW-7) cannot, by itself, be relied upon to establish that the substance allegedly recovered from the accused-appellants was *charas*.

37. As an upshot of the discussion made hereinabove, we are of the opinion that the prosecution has failed to prove that the substance recovered from the accused-appellants was *charas*. Consequently, the conviction of the accused-appellants, as recorded by the trial Court and affirmed by the High Court, is unsustainable in law. The accused-appellants are, therefore, entitled to the benefit of doubt and deserve to be acquitted of the charges.

38. Resultantly, the judgment of conviction and order of sentence dated 5th September, 2006 passed

by the trial Court and affirmed by the High Court *vide* common impugned judgment dated 26th November, 2010, are hereby set aside.

39. The appellants, namely, Abdul Rajik and Govind, are acquitted of the charges. The appellants are on bail and need not surrender. Their bail bonds stand discharged.

40. The appeals are allowed accordingly.

41. Pending application(s), if any, shall stand disposed of.

.....J.
(SANDEEP MEHTA)

.....J.
(MANMOHAN)

**NEW DELHI;
SEPTEMBER 16, 2026.**