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**IN THE HIGH COURT OF MADHY PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

**ON THE 29<sup>th</sup> OF FEBRUARY, 2024**

**CRIMINAL APPEAL No. 4576 of 2023**

**BETWEEN:-**

**VISHAL SHAHNI S/O SHANKAR SHAHNI, AGED ABOUT  
23 YEARS, OCCUPATION: HARDWARE CHEMICALS  
H.NO. 6 GALI NO. 7 WARD NO. 3 SIDDHARTH NAGAR  
POLICE STATION VIJAY NAGAR DISTRICT GAJIYABAD  
(UTTAR PRADESH)**

**.....APPELLANT**

***(BY SHRI DURGESH KUMAR SINGRORE - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH THROUGH POLICE  
STATION MOTINALA DISTRICT MANDLA (MADHYA  
PRADESH)**

**.....RESPONDENT**

***(BY SHRI Y.D. YADAV - GOVERNMENT ADVOCATE)***

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सत्यमेव जयते  
*This appeal coming on for hearing this day, the court passed the  
following:*

**JUDGMENT**

The appellant has preferred this appeal against judgment dated 15.03.2023 passed by the Special Judge (N.D.P.S. Act), Mandla in Special Case No.SC NDPS 15/2018, whereby the appellant was convicted for the offence punishable under Sections 8(C)/20(B)(ii)(B) of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as 'the N.D.P.S. Act') and sentenced for four years' R.I. with fine of Rs.15,000/-. In default of payment of fine, he was directed to undergo for six months R.I. in addition.

2. As per prosecution case, police received an information on 10.09.2018

that a silver Maruti Swift Car without any number is going from Chilphi to Motinala in which three boys are travelling and they may have contraband article Ganja. Information was entered in the *Roznamchasanah* No.36. Independent seizure witnesses were called and electronic weighing machine was taken and Panch were informed about information and they went to spot for intercepting the vehicle. There was chance that accused persons may escape, therefore, search warrant was not obtained and Panchanna regarding same was prepared. Police intercepted the vehicle and found three persons in the car. They were given notice under section 50 of the NDPS Act and after taking their consent, vehicle was searched. Panchnama was prepared and search was done. From joint possession of appellant along with other accused persons, one bag was recovered from trunk of car. Packet was opened and same was found to be Ganja. Accused persons does not have any licence to transport Ganja. On weighing, total 4.965 kgs. of Ganja was found. Homogenous mixtures was made and two samples were drawn weighing 100-100 gms. Remaining Ganja and samples were sealed and Maruti Car, mobile and debit card were seized and they were arrested. Contraband Ganja was forwarded to Police Station and handed over to In-charge Head Constable. Head Constable put a second seal on the contraband. Samples were sent to the State Forensic Science Laboratory, Sagar for examination. As per report, contraband substance was found to be Ganja.

3. Appellant pleaded not guilty before the trial Court and was tried for committing offences mentioned above. Trial Court after recording the prosecution witnesses framed the charges against appellant and he was convicted and sentenced as mentioned above.

4. Learned counsel appearing for appellant raised a singular ground in appeal that there is non-compliance of Provision of Section 52-A of the NDPS Act. It is submitted that said Provisions were not followed. He placed reliance upon judgment passed by the Apex Court in case of **Simranjit Singh Vs. State of Punjab passed in S.L.P. (Crl.) No.1958 of 2023**. The relevant paragraphs of said judgment are quoted as under:-

8. In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case, it was held thus:

“15. It is manifest from Section 52-A(2) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the

process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of Mohanlal. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.”

5. It is submitted that facts of the case so far as violation of Section 52-A of the NDPS, 1985 Act is concerned, is similar. In this case, samples were not drawn before the Magistrate. Inventory was not prepared, therefore, due to non-compliance of section 52-A of said Act, judgment of conviction against appellant be set aside and he may be acquitted.

6. Learned Government Advocate appearing for the State submitted that police recovered 5.5 kgs. of contraband article from Maruti Swift Car on 10.09.2018. Appellant along with other accused person were found in the car. Ganja was found in their conscious possession. 12 Witnesses were examined

by the prosecution to prove the case and Sections 42, 50, 52-A, 55 and 57 of the NDPS Act was properly complied with by prosecution. In these circumstances, appeal deserves to be dismissed.

7. Heard counsel for the parties.

8. Question which arose before this Court for adjudication is :-

(i) Whether there is non-compliance of Section 52-A of the NDPS Act and

(ii) Whether due to said non-compliance and if yes, the appellant is entitled for acquittal in the case.

9. Supreme Court of India has examined Section 52-A of the NDPS Act, 1985 in detailed in case of **Union of India Vs. Mohan Lal and another (2016) 3 SCC 379** and has also issued relevant directions in paragraphs 14 and 31 of said judgment which are quoted as under:-

14. Section 52-A as amended by Act 16 of 2014, deals with disposal of seized drugs and psychotropic substances. It reads:

**“Section 52A : Disposal of seized narcotic drugs and psychotropic substances.** (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

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

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

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

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

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

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

list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

**31.** To sum up we direct as under:

**31.1.** No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading ‘seizure and sampling’. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

**31.2.** The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.

**31.3.** The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store

required, one storage facility for more than one districts.

**31.4** Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'.

10. Gazette Notification of Ministry of Finance (Department of Revenue) dated 23.12.2022 in which in exercise of the powers conferred by Section 76 read with Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 enacted the Rules. These Rules are called Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Relevant Rules for adjudication of this case are quoted as under:-

**3. Classification of seized material.** – (1) The narcotic drugs, psychotropic substances and controlled substances seized under the Act shall be classified based on physical properties and results of the drug detection kit, if any, and shall be weighed separately.

(2) If the narcotic drugs, psychotropic substances and controlled substances are found in packages or containers, such packages and containers shall be weighed separately and serially numbered for the purpose of identification.

(3) All narcotic drugs, psychotropic substances and controlled substances found in loose form shall be packed in tamper proof bag or in container, which shall be serially numbered and weighed and the particular of drugs and the date of seizure shall also be mentioned on such bag or container:

Provided that bulk quantities of ganja, poppy straw may be packed in gunny bags and sealed in such way that it cannot be tempered with:



Provided further that seized concealing material such as trolley bags, backpack and other seized articles shall be sealed separately.

(4) The classification, weighing, packaging and numbering referred to in this sub-rule shall be done in the presence of search witnesses (Panchas) and the person from whose possession the drugs and substances was recovered and a mention to this effect shall invariably be made in the panchnama drawn on the spot of seizure.

(5) The detailed inventory of the packages, containers, conveyances and other seized articles shall be prepared and attached to the panchnama.

**8. Application to Magistrate.** – After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.

**9. Samples to be drawn in the presence of Magistrate.** – After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.

**10. Drawing the samples.** – (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and

containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

**11. Quantity to be drawn for sampling.** – (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent.

**13. Despatch of sample for testing.** – (1) The samples after being certified by the Magistrate shall be sent directly to any one of the jurisdictional laboratories of Central Revenue Control Laboratory, Central Forensic Science Laboratory or State Forensic Science Laboratory, as the case may be, for chemical analysis without any delay.

(2) The samples of seized drugs or substances shall be despatched to the

jurisdictional laboratories under the cover of the Test Memo, which shall be prepared in triplicate, in Form-6.

(3) The original and duplicate of the Test Memo shall be sent to the jurisdictional laboratory alongwith the samples and the triplicate shall be retained in the case file of the seizing officer.

11. Executive Magistrate Kainhaiya Lal (PW-10) initiated proceeding for pre-trial disposal of contraband articles. Investigating Officer has produced inventory Ex.P/35 for certification of Executive Magistrate. Executive Magistrate has marked the bags of Ganja as Article-A and found its weight found to be 4.803 kgs. Sealed bag was opened and three samples of 100-100 gms. of Ganja was taken and weighing on electronic weighing machine. Samples were sealed and marked as C-1 (Ex.P/37), C-2 (Ex.P/38) and C-3 (Ex.P/39) i.e. articles 1, 2 and 3. Remaining Ganja was sealed after drawing samples. Photographs of seized contraband article Ganja was taken which was exhibited in trial as Exs.P/40 to 45. On going through the procedure, it was found that Section 52(A)(2)(A)(B)(C) was complied with by Magistrate. As per Rules which has been enacted by Central Government, Rules 9, 10, 11 and 12 has been complied with. However, Rule 13 has not been complied with by prosecution.

12. As per Rule 13 of Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules 2022, samples after being certified by Magistrate shall be sent to one of jurisdictional laboratory for testing. In present case, samples were drawn by investigating officer and also before the Magistrate and samples which were sent to the State Forensic Laboratory was drawn by investigating officer and was not drawn before the Magistrate. Therefore, there is non-compliance of Rule 13 of Narcotic Drugs

and Psychotropic Substances (Seizure, Storage, Sampling and Disposal Rules, 2022).

13. There has to be strict compliance of the Act and Rules under NDPS Act. Act is a Special Act which is having drastic consequences on the accused persons in respect of their bails and freedom. It is duty of prosecution to strict compliance of Rules which have been framed by the legislature. In this case, there is non-compliance of Rule 13. Accordingly to section 52-A of NDPS Act, 1985 inventory, photographs, psychotropic substances, list of samples drawn certificate of Magistrate is to be treated as primary evidence in the case. In this case, due to non-compliance of Rule 13, appellant succeeds in appeal.

14. Appeal filed by the appellant is **allowed**. The conviction as well sentence imposed by the trial Court for offence under Sections 8(c)/20(B)(ii)(B) of the Narcotic Drugs & Psychotropic Substance Act, 1985 is hereby set aside. The appellant is now acquitted from all the charges appended against him.

15. Copy of the judgment be sent to the trial Court along with its record for information.

(VISHAL DHAGAT)  
JUDGE