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CRA-6303-2023

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

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK AGARWAL**

**&**

**HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH**

**ON THE 26<sup>th</sup> OF FEBRUARY, 2026**

**CRIMINAL APPEAL No. 6303 of 2023**

***VEER SINGH AND OTHERS***

***Versus***

***THE STATE OF MADHYA PRADESH***

.....  
**Appearance:**

*Shri Surendra Verma, learned counsel for the applicants.*

*Shri Veer Vikrant Singh, learned Dy. Advocate General for the respondent State.*

.....

**ORDER**

***Per. Justice Avanindra Kumar Singh***

This Criminal Appeal has been filed being aggrieved of the judgment dated 20.3.2023 passed by the learned Special Judge (NDPS Act) District Rewa in SC No. NDPS/20/2019 (State of M.P. Through Police Station Chorhata, District Rewa v. Veer Singh and others) in Crime No. 46/2019, convicting the appellants/accused as below:

No.	Name of Accused	Offence for which convicted	Imprisonment	Fine	In Default of paying fine
1.	Veer Singh S/o Late Sohan Singh	Section 8, 20 (b) (ii-C) read with Section 29 NDPS	12 years RI	1,20,000/-	One year RI
2.	Mukesh Prasad Vishwakarma S/o late Bhagwandas Vishwakarma	Section 8, 20 (b) (ii-C) read with Section 29 NDPS	12 years RI	1,20,000/-	One year RI



2. At the time of final arguments learned counsel for appellants Shri Surendra Verma submitted that the appeal has been filed on the grounds that the trial Court has erred in law as well as on facts while convicting the appellants for the offence punishable under the provisions of N.D.P.S Act as aforesaid. The trial Court has failed to consider the fact that the appellants are innocent and they have been falsely implicated in the offence. Learned trial Court has also failed to appreciate that appellant No. 1 (Veer Singh) did not have information regarding contents of the packets which were to be sent to the place of Ramlal Jaiswal. Learned trial Court has failed to appreciate testimony of Anil Kumar Vishwakarma (D.W.-1) who has categorically stated that the appellant was having tea at Dhaba, when some police officials came. It is pertinent to mention here that aforesaid witness was running the tea stall and his testimony should have been considered by the learned trial Court. The learned trial Court has failed to appreciate that in the present case there is grave violation of Section 50 of NDPS Act, compliance of which is necessary. In this regard it is pertinent to mention here that consent memorandum (Ex. P-7) which has been prepared in the present case is joint and the same is not sufficient to fulfil requirements provided under Section 50 of NDPS Act as it is a joint Panchnama Even the report of F.S.L was sought and given on the basis of joint recovery, whereas only appellants were convicted, seizure was disbelieved for the other co-accused Manoj. learned trial Court has failed to appreciate that in the present case, there is grave violation of Section 57 of NDPS Act, compliance of which is necessary. The trial court has failed to consider the fact that there are grave infirmities in the testimonies of the prosecution witnesses. The prosecution has not been able to prove its case beyond reasonable doubt as to arrived at the conclusion that the appellants are liable under



the alleged offences and that learned trial Court has failed to appreciate the established principle of criminal law that benefit of doubt in a case should always be given to the accused.

3. Investigating Officer Animesh Dwivedi (PW-8) admitted that he was given case for investigation on 22<sup>nd</sup> January 2019, he kept the file with him till 27<sup>th</sup> January, 2019 for which no reasons were assigned. Prosecution Witnesses P.W.-5 Santosh Shukla and P.W-6 Santosh Kushwaha have not supported the prosecution story and P.W-5 Santosh Shukla has deposed that he had signed plain papers. There is no evidence of conscious possession. Before proving conscious possession, presumption under Section 35 of NDPS Act cannot be attracted. Contraband articles were made homogeneous (समरस) contrary to law. There is total non-compliance of Section 52-A of NDPS Act, inasmuch as; (i) Samples are made twice; (ii) Sample made before the Magistrate was not sent to the F.S.L for testing (iii) It is admitted by the I.O Animesh Dwivedi (PW-8) that Karyvahi Rojnamcha Sanha of Section 52-A of NDPS Act was not made part of the challan. It is also admitted by him that necessary particulars were not recorded. Photographs of exercise under Section 52 – A of NDPS Act was not made part of the challan conducted after lapse of 5 months on 27<sup>th</sup> June, 2019; (v) It is also an admitted fact that neither the full contraband article was produced before the Court nor the same has been produced before the Magistrate. (vi) There is no photograph or videography recorded of the exercise conducted under Section 52-A of NDPS Act; and (vii) the Magistrate had conducted an exercise mechanically in total careless manner and certificate was issued undated without verifying the contents and the duty cast on him. Therefore, prayer is made to allow the appeal and acquit the accused persons.



4. On the other hand learned Counsel for the State Shri Vikrant Singh supported the impugned judgment and prayed for dismissal of the appeal. Stating that minor inconsequential discrepancies cannot be a ground for acquittal over all evidence and prosecution case has to be seen.

5. The prosecution story in short is that on 21/01/2019 in Police Station Chorhata, an information was received by Sub Inspector Virendra Singh Parihar (P.W.-9) posted in Police Station Chorhata at about 10:23 PM that a truck bearing No. MP 20 HB/3344 is carrying ganja in large quantity illegally and is coming towards Rewa from Maihar and will reach Rewa between 12 O'clock in the night and 04:00 AM in the morning, This information was noted in Rojnamcha Sanha No.53 Ex. P-31 dated 21.1.2019 at 10:23 PM. Thereafter, Constable No.566 Pankaj Mishra P.W.-3 was sent to call two independent witnesses and electronic weighing machine from the Chorhata was called and his departure was recorded in Rojnamcha Sanha No.54 Ex. P-32 dated 21.1.2019 at 10.28 p.m. At about 11:12 PM Pankaj Mishra (P.W.-3) came back with two independent witnesses Santosh Shukla (P.W.-5) and Santosh Kushwaha (P.W. 6) along with electronic weighing machine with 01 quintal capacity and this was entered in Rojnamcha Sanha No.56 (Ex. P-34) dated 21.1.2019 at 11:12 p.m, work certificate is Ex.P-33 dated 21.1.2019. Witnesses were informed about the information received through the informant and a panchnama of the same was made and report Rojnamcha Sanha No.57 (Ex. P-35) dated 21.1.2019 was registered at 11:27 PM. Since, the In-charge of police station was outside the headquarter therefore for conducting raid, a memo was prepared and along with panchnama Constable Pankaj Mishra (P.W.-3) was sent to CSP Headquarter. His departure was registered in Rojnamcha Sanha 58 (Ex. P-36) dated 21.1.2019 at 11:34 PM. It is further the prosecution story that



since the residence of the CSP was locked, therefore the information and panchnama was handed over to the reader of the CSP (Police) and obtained an acknowledgment for the same and returned to the police station and return entry was made in Rojnamcha Sanha No.59 (Ex. P-37) dated 21.1.2019 time 11:53 PM. Since the information from the informant was reliable and looking to the possibility of delay, if the search warrant was to be obtained under Section 41 of NDPS Act therefore, a panchnama under Section 42 of NDPS Act was made and looking to the possibility of accused absconding or possibility of the concealment of the contraband therefore the search warrant was not obtained. The witnesses accompanied the police staff with the investigation material, they departed for the spot where the truck was expected to arrive at 00:23 AM and this fact was noted in Rojnamcha Sanha No.60 (Ex. P-38) dated 22.1.2019, detailed report of proceeding by T.I. Chorhata to C.S.P, Rewa dated 22.1.2019 is Ex. P-39, Ex. P-40 dated 24.1.2019 is regarding sending sealed packet of 25 grams Ganja Article A-1 to F.S.L Sagar, F.S.L report is Ex. P-41, F.I.R dated 22.1.2019 is Ex. P-42. Rojnamcha Sanha Ex. P-43 dated 22.1.2019 at 9:16 AM was recorded on return from the spot, Ex P-44 is photocopy of the certificate of the drug by the Drug Disposal Committee, Ex. P-45 is photocopy of auction of the truck bearing No. MP 20 HB 3344 dated 23.11.2019 by the concerned committee of the officers, Ex. P-46 is list of Narcotic Substance in proceedings under Section 52-A of the NDPS Act, which is **undated** and mentioning about proceeding on 22.1.2019 and Ex. P-47 is again a **undated** letter written by T.I. Chorhata, P.S., Rewa to Tahsildar who has certified the same but it is **undated**.

6. While Sub Inspector Virendra Singh (P.W-9) was waiting for the truck and the suspects then from the Bela side before the truck No. MP 20 HB 3344, a Scorpio car bearing No.MP 17 CA 5835 came at about 00:50 AM. Police staff



stopped the vehicle in which driver Manoj Pandey and Ramlal Jaiswal were found and in truck, driver Veer Singh, cleaner Gurvinder Singh and Mukesh Prasad Vishwakarma were found. All persons were questioned by the Sub Inspector Virendra Singh (P.W.-9), then they informed the police officers that in truck about 10 quintals Ganja was kept in sacks and truck was going to the place of Ramlal Jaiswal at Rewa.

7. It is further the case of the prosecution that on the spot, a memorandum of Veer Singh (Ex. P-15) and of Mukesh Prasad Vishwakarma (Ex.P-17) under Section 27 of Evidence Act was made. Under section 50 of NDPS Act, the accused persons were given notice (Ex. P-7) to the effect that information has been received about carrying of illegal narcotic substance ganja and police wants to search the vehicle i.e. truck and Scorpio. They were also informed that they have a right for getting vehicles checked by the Magistrate or Police Officer Virendra Singh Parihar or gazetted officer. Accused consented to the search by Sub Inspector Virendra Singh Parihar, a panchnama of consent to the above effect was made thereafter Police Officer and witnesses got themselves searched by the suspects. A panchnama was made at 02:15 AM.

8. It is further the case of prosecution that at about 02:30 AM when truck and Scorpio was searched then in the truck bearing No.MP 20 HB 3344 narcotic substance 'ganja' was found between cartons of dalda and in 50 sacks, 500 packets were found, a panchnama (Ex. P-9) in this regard was made at 02:40 AM. When the material was smelled, seen and touched, then it was found that it was the 'ganja', thereafter, panchnama was made in this regard which is Ex. P-10. Thereafter, electronic weighing machine brought by Santosh Shukla was used. The contraband 'ganja' was kept in packets of 22 kg each and in 50 sacks 500 packets



were found. The physical verification panchnama (Ex. P-11) of electronic weighing machine was prepared at 02:50 AM.

9. Further the case of prosecution is that the contraband which was seized from the possession of the accused was mixed by putting the material on a big polythene sheet and all packets were cut and material was mixed and on weighing the same, the contraband weight was 10 quintals 50 grams ganja Panchnama is Ex. P-12, worth Rs.1 crore. From the mixed 'ganja' for investigation, samples of two packets weighing 25 grams each was prepared which was marked as Annexure A/1 & A/2, remaining 'ganja' was filled in 25 sacks each sack weighing 40 kg and sacks were numbered from 1 to 25 and they were marked as 'A'. Out of the 50 sacks in which 37 sacks were of jute and 13 sacks were of plastic. These were kept in two sacks equally and sample packets A/1 & A/2 and 25 sacks of 'ganja' were marked as 'A' and packets were packed with polythene paper and tied with rope in equal portion.

10. It is further the case of prosecution that at about 06:30 a.m. sealed sample panchnama (Ex. P-13) was prepared, at 06:55 a.m, chit panchnama (Ex. P-14) was made, at 07:00 AM, the 'ganja' seized from the truck, Scorpio bilty, papers and mobile etc. were seized as per seizure memo (Ex. P-20).

11. A copy of seizure memo was given to the accused. As per Section 52 of NDPS Act., accused were informed that from their (accused persons) possession narcotic substance 'ganja' has been recovered and seized. Since an offence under Section 8, 20, 25 & 25-A was committed, accused persons namely Veer Singh, Mukesh Prasad, were arrested and arrest memo is Ex.P-22 & Ex. P-24 were prepared separately respectively. Seized contraband was handed over to the Head Constable (Malkhana) and crime was registered and matter was taken for



investigation. After completing the investigation, charge-sheet No.92/2019 was prepared and on 22/04/2019 the charge-sheet was filed before the trial Court.

12. The learned trial court on 08.05.2019 framed the charges against the appellant/accused under Section 8 r/w Section 20(B)(II-C) and Section 25 r/w Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused denied the charges and demanded a trial.

13. During the course of the trial, the prosecution examined the following witnesses PW/1- Mahendra Singh Sub Inspector, PW/2- Mrigendra Singh Baghel Sub Inspector, PW/3- Pankaj Mishra Constable, PW/4- the then Head Constable Ramvihar Tiwari, PW/5- independent witness Santosh Shukla, PW/6- independent witness Santosh Kushwaha, PW/7- Umesh Kumar Tripathi Assistant Sub Inspector, PW/8- Animesh Dwivedi Inspector, PW/9- the then Inspector Virendra Singh Parihar, PW/10- Yateesh Shukla.

14. The prosecution exhibited the following documents: Ex.P/1- Duty Certificate dated 21.1.2019, Ex.P/2- Acknowledgment receipt (**undated**), Ex.P/3- Verified Photocopy of seizure register dated 22.1.2019, Ex.P/4- Verified photocopy of the register of seized goods dated 22.1.2019, Ex.P/5- informant information panchnama Section 42 of NDPS Act dated 21.1.2019 at 23:20 PM, Ex.P/6- Panchanama informant (**undated**) Section 42 (2) of NDPS Act, Ex.P/7 Consent Panchanma dated 22.1.2019 at 2:00 AM, Ex.P/8 Search Panchnama of witnesses and police officers dated 22.1.2019 at 2:15 AM, Ex. P/9 Search Panchnama of suspects dated 22.1.2019 at 2:30 AM, Ex.P/10- Panchnama of identification of drugs dated 22.1.2019 at 2:40 AM, Ex. P/11- Panchnama of Scale Physical Verification dated 22.1.2019 at 2:50 AM, Ex.P/12- Samaras and weighing scale Panchnama dated 22.1.2019 at 6:00 AM, Ex.P/13 Panchnama Seal Sample



dated 22.1.2019 at 6:30 AM, Ex.P/14- Chit Panchnama dated 22.1.2019 at 6:55 AM, Ex.P/15 Memorandum under Section 27 of Evidence Act of Veer Singh dated 22.1.2019 at 1:00 AM, Ex.P/17 Memorandum under Section 27 of Evidence Act of Mukesh Prasad dated 22.1.2019 at 1:25 AM, Ex.P/20-Property Seizure Memo dated 22.1.2019 at 7:00 AM, Ex.P/21- Information and fard Panchnama of arrest dated 22.1.2019 between 7:00 to 7:40 AM, Ex.P/22 Arrest Memo of Veer Singh dated 22.1.2019 at 7:50 AM, Ex.P/24-Arrest memo of Mukesh Prasad Vishwakarma dated 22.1.2019 at 8:00 AM, Ex.P/27 Police Statement under Section 161 of Cr.P.C of Santosh Shukla dated 27.1.2019, Ex.P/28- Information regarding action taken to the City Superintendent of Police Chorhata dated 21.1.2019 (there is overwriting in date and time in letter of Police Station Chorhata), Ex.P/29-Spot Map dated 27.1.2019, Ex.P/30- Pre-trial Disposal Schedule Under Section 52-A of NDPS Act dated 27.6.2019 was prepared, Ex.P/31, Ex.P/32, Ex.P/34 to Ex.P/38, Ex.P/43 are the Rojnamcha Sanhas, Ex.P/33 Work certificate Form, Ex.P/39 Detailed report of proceedings, Ex.P/40 letter for sending drug sample to director State Forensic Lab, Sagar for testing purpose, Ex.P/41 Drug Examination Report received from FSL Sagar, Ex.P/42- First Information Report, Ex.P/44- Photocopy of the certificate of destruction of the drug, Ex.P/45 Photocopy of the auction certificate of the vehicle truck bearing No. MP 20 HB 3344, Ex.P/46 list of narcotic substances prepared under Section 52-A, Ex.P/47- Index No.02 signed by TI Chorhata and Executive Magistrate (**undated**).

15. In addition thereto, the prosecution has exhibited the following articles during the course of the trial

1. Article CJA-1 (Sample A1 drawn by the Tehsildar during proceeding under Section 52A),



2. Article CJA-2 (Sample A2 drawn by the Tehsildar during proceeding under Section 52A),
3. Article CJA-3 (Sample A2 of the drug taken during the seizure proceeding A-2)
4. Article CJA-4 (Sealed sample packet A-1 received from FSL Sagar),
5. From Article CJA-5 to CJA-9 (seized Five Mobile phones in sealed condition),
6. Article CJA-1(450 CC bag of narcotic substance, from which 02 CC samples have been separated).
7. One Scorpio four wheeler seized on spot bearing Registration No. MP 17 CA 5835.
8. Truck bearing No. MP 20 HB 3344 – (Narcotics Substance seized from the truck).

16. When examined under Section 313 of the Code of Criminal Procedure, wherein all 86 questions were put to the accused persons, they generally answered that they are unaware of the facts (पता नहीं) or denied the allegations as incorrect (गलत है). However, the accused Veer Singh also stated that when he was drinking tea at Dhaba situated at Katni, at that time in a Bolero vehicle 7 to 8 police personnel in civil dress came and they made him to accompany them in Bolero and seized the documents of the vehicle and a person from the police party took the truck to Chorhata Police Station. They took away the truck at 9:00 p.m. whereas the truck reached at about 3:00 – 4:00 a.m. in the morning.

17. The co-accused, Mukesh Prasad Vishwakarma, in his examination under Section 313 of the Code of Criminal Procedure, similarly responded to the



questions by stating that he is unaware of the allegations and that the same were incorrect. He further stated that he was not travelling in the truck, that he has been falsely implicated in the present case, and that he is a labourer by occupation. Police apprehended him at Katni and took him to Police Station Chorhata in a Bolero vehicle. In defence appellants have produced defence witness Anil Kumar Vishwakarma (D.W-1).

18. It is further evident that, in addition to the present appellants Veer Singh and Mukesh Prasad Vishwakarma, the learned trial court, by order dated 08.05.2019, also framed charges against co-accused Manoj Pandey, Gurvinder Singh, and Ramlal Jaiswal in the same trial under Section 8 read with Section 20(B)(II-C) and Section 25 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

19. As reflected from the record and the judgment of the learned trial court, the accused Ramlal Jaiswal expired during the pendency of the trial, as a result of which the proceedings qua him stood abated. During the course of trial, the co-accused Gurvinder Singh absconded, and accordingly, his trial was separated by the learned trial court vide order dated 23.01.2022. Subsequently, on 31.01.2023, a perpetual arrest warrant was issued against the accused Gurvinder after he was declared absconding. As per the judgment dated 20.03.2023, the learned trial court has acquitted co-accused Manoj Pandey.

20. Perused the record of the trial court.

The first ground of objection is that there was violation of Sections 50 & 52-A of NDPS Act. The above relevant provisions are as under :-

**"50. Conditions under which search of persons shall be conducted :-**



*(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.*

*(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).*

*(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.*

*(4) No female shall be searched by anyone excepting a female.*

*(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).*

*(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.*



Section 52A in The Narcotic Drugs And Psychotropic Substances Act, 1985

as enforceable on 29.05.1989:

*"52A. Disposal of seized narcotic drugs and psychotropic substances.-*

*- (1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, 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 drugs, psychotropic substances, controlled substances or conveyances 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, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances 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, psychotropic substances, controlled substances or conveyances 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, substances or conveyances] 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) Where 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 1972) 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."*

21. It is submitted by learned counsel for the appellants that a joint consent Panchanama was made which is illegal. Now it is to be seen whether questions were asked to the witnesses during trial about violation of Section 50 of NDPS Act which is regarding search of a person and consent panchnama for the same purpose. On this aspect, regarding joint panchnama neither it has been stated as a ground of appeal nor argued at the time of final hearing of this appeal and not



raised before the trial Court as to what was the prejudice to the accused in their defence, if instead of separate consent panchnama, joint panchnama Ex.P-7 was made for search of vehicle truck from which Ganja was recovered.

22. In this regard, on perusal of the statement of prosecution witnesses S.I. Mahendra Singh (PW-1) cross-examination in Para-11, S.I. Mrigendra Singh Baghel (PW-2), Constable Pankaj Mishra (PW-3), Ram Vichar Tiwari (PW-4), S.I. Umesh Kumar Tripathi (PW-7), Animesh Dwivedi (PW-8), Virendra Singh Parihar (PW-9), it is seen that no question have been asked from these persons about violation of section 50 NDPS Act. Even in the statement under Section 313 of Cr.P.C. it has not been stated that on account of joint panchnama Ex.P7 any prejudice was caused.

23. Learned trial Court has dealt with all these aspects and in Para-57 rightly has referred to the judgment of *Navdeep Singh Vs. State of Haryana, 2013 (2) SCC 584*, wherein the Hon'ble Supreme Court has held that in Section 50 of NDPS Act regarding information there is no definite form. Similarly, trial court rightly referred in Para-55 the case of *State of MP vs. Dhirendra, AIR 1997 SC 318*, according to which if the independent witnesses admits their signature on panchnama and did not complaint that they were forced to sign on the documents and if they turned hostile during trial, prosecution case would not vitiate. Even otherwise, the truck belong to Veer Singh from which Ganja was recovered and provision of Section 50 of NDPS Act applies only in those cases where there is personal search but in this case, contraband Ganja has been recovered from the body of the truck under possession of appellants Veer Singh and Mukesh. Hence, objection regarding non-compliance of Section 50 of NDPS Act is not maintainable and is hereby rejected needless to say that at the time of final hearing



an objection is made by way of ground of appeal that in this case there is no document on the basis of which it can be held that the appellant was driving the truck and learned trial court in Para 57 has wrongly held that truck bearing No. MP20-HB-3344 from which Narcotics substance ganja was in the possession of the Veer Singh but the learned trial court in Para 63 has correctly mentioned that there is no explanation by appellant Veer Singh and Mukesh Prasad Vishwakarma that at the time truck was seized by the police they were not in possession of the truck, in fact what has been stated in examination under section 313 Cr.P.C. that police wrongly arrested them from a tea stall that defence was never taken during the cross-examination of witnesses as mentioned above in cross examination of PW1 Mahindra Singh, PW 2 Migendra Singh, PW3 Pankaj Mishra, PW4 Ram Vichar Tiwari, PW5 Santosh Shukla, PW 6 Santosh Kushwaha (whose statement was recorded on 23.9.2022 and cross examination was made on 01.11.2022). PW 7 Umesh Kuma Tripathi ,PW 8 Anumesh Dwivedi.

24. PW-9 Virendra Singh Parihar in cross-examination Para 20 was asked that accused Veer Singh, Gurvinder Singh and Mukesh Prasad Vishwakarma are driver and cleaner, who were directed by the owner that material has to be taken to Rewa but they were apprehended in the way to which this witness (PW 9) has answered that Veer Singh is the truck owner and he was carrying Narcotics Substance.

25. In his statement under Section 313 Cr.P.C. Veer Singh has not stated he is not the owner of the truck but has stated that he is a truck driver. If he was not the owner of the truck it was very easy for the Veer Singh to file the relevant document that on 21.1.2019 when the truck was apprehended by the police any other person was the truck owner. Therefore, the plea of being only the truck



driver or of not being in conscious possession of the truck or material kept in the truck is not sustainable, in fact, on appreciation of evidence it is seen that at the time of seizure of truck it was Veer Singh, owner of the truck who was driving of the truck. It is further seen that as per order sheet dated 17.12.2019, an application was filed by the accused/appellant Veer Singh that he is owner of the truck bearing No. MP 20 HB 3334 (correct number is 3344) may be released on interim custody. Therefore, during the course of argument, this argument that the truck did not belong to the applicant Veer Singh is incorrect. Application of the Veer Singh is on record therefore, finding of the Trial Court in Paras 57 & 63 cannot be assailed that contraband Ganja was recovered from the truck driver (owner) Veer Singh and cleaner Mukesh Prasad from their conscious possession from truck bearing no. MP20 HB 3344.

26. Now, the sole objection remains regarding Section 52-A of NDPS Act, the procedure prescribed under Section 52-A is to prepare an inventory of drug containing details of description, quality, quantity, mode of packing, marks, numbers or such other particulars of the Narcotic Substances or Conveyance or the Packing in which they are packed or origin of country and other particulars as the officer may think fit for identification of substance and make an application to any Magistrate for the purposes of certifying the correctness of the inventory so prepared or taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or 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.

27. PW-1 Mahendra Singh Sub Inspector in Paras 1 & 6, stated about mixing of the Ganja from the sacks and making 50-50 gram two packets.



28. PW-2 Mrigendra Singh Baghel Sub Inspector in Para 3 has stated that the ganja was mixed and 25-25 gram of two sample packets were made. In cross-examination Para 6 he has stated that on the spot no form was prepared but packets were sealed by the seal of Police Station.

29. PW-3 Pankaj Mishra Constable No. 966 has also stated about the drawing of samples in Para 2 of the statements, in cross-examination Para 4 this witness has stated that he cannot tell who drew the samples and whose seal was affixed.

30. PW-4 Ramvichar Tiwari the then Head Constable, Malkhana in para- 2 has stated about keeping the sample and other sacks of Ganja in the Malkhana on 22.1.2019 and entry was made in Malkhana Register and he stated that he had given a receipt of the same which is Ex.P/2. Thereafter, Packet 'A 1' on 24-01-2019 was handed over to Constable Narendra Tiwari for sending the same to FSL, Sagar and on 25-01-2019 material was deposited and he (Narendra Tiwari) filed the receipt after depositing of the packet. On 27-01-2019 entry was made in Rojnamcha Sanha 48. Copy of the Malkhana Register is Ex.P/3. Constable No. 1128 Vivek Singh brought the FSL Report from F.S.L. Sagar and entry was made in Rojnamcha Sanha No. 35/11, true copy is Ex.P/4. In Para-5 of cross-examination he admitted that he did not open the sacks to verify what is kept therein, he had received the sacks of Ganja in sealed condition.

31. PW-5 Santosh Shukla, independent witness has been declared hostile but he has admitted his signature on multiple documents like Ex.P/5-Informant Information Panchnama Section 42 of NDPS Act, Ex.P/6-Panchanama informant Section 42(2) NDPS Act, Ex.P/7 Consent Panchanma, Ex.P/8 Search Panchnama of witnesses and police officers, Ex.P/9 Search Panchnama of suspects, Ex.P/10-



Panchnama of identification of drugs, Ex.P/11- Panchnama of Electronic Scale Physical Verification, Ex.P/12-Samaras (mixing) and weighing Panchnama, Ex.P/13 Panchnama Seal Sample, Ex./14- Chit Panchnama, Ex./15 Memorandum under Section 27 Evidence Act of Veer Singh, Ex./17 Memorandum under Section 27 Evidence Act of Mukesh Prasad, Ex.P/20-Property Seizure memo, Ex.P/21- Information and fard Panchnama of Arrest, Ex.P/22 Arrest memo of Veer Singh, Ex.P/24 Arrest memo of Mukesh Prasad Vishwakarma on which on A-A part there are his signature. In cross examination Para 6 he stated that when he had signed, Ex.P/5 to Ex.P/26 nothing was written on them. PW/6 Santosh Kushwaha independent witness is also hostile but he has accepted his signature on Ex.P/20, 22, 24, on part B-B and in para-2 in examination-in-chief. In para- 3 he has stated that from truck about 10 quintals of Ganja was seized in 50 sacks in para-4 stated about verification of Scale and Samras Panchnama proceedings Ex. P-11 and Ex. P-12, in cross-examination in para-5 he stated that when he signed them, some documents were written and some were not written.

32. P.W.-7 Umesh Kumar Tripathi A.S.I has stated that on 21.1.2019 he was Reader to C.S.P. and on that day, Constable Pankaj Mishra brought a Tahrir regarding police information panchnama from P.S. Chorhata and since C.S.P was not available, therefore, he had received the same and gave receipt Ex. P-28 wherein 'A to A' his signature and 'B to B' noting is in his hand-writing. In paragraph-3 he admitted that there is overwriting in Ex. P-28 in date on 'A to A' part.

33. PW-8 Animesh Dwivedi Inspector in para-2 has stated that he proceeded for investigation on 27.1.2019. In para-4 of examination-in-chief he has stated that on 27-06-2019, a letter was written about proceedings under Section 52-A of



NDPS Act and a pre-trial disposal chart was made which is Ex.P/30 on part 'A to A' there is his signature. In cross-examination paragraph 6 he stated that between 22.1.2019 to 27.1.2019 he did not investigate as he was busy in other work. In Para-10 he has stated that proceeding under section 52-A of NDPS Act was done as per procedure before the Tehsildar. Photographs were taken but he admitted that “यह कहना सही है कि जो फोटोग्राफी माननीय तहसीलदार के समक्ष ली गई थी वह चालानी कार्यवाही में पेश नहीं की गई है.” In paragraph-11 he admitted that Rojnamcha Sanha regarding proceedings under Section 52-A of NDPS Act are not attached in the case.

34. PW-9 Virendra Singh Parihar, the then Inspector, in para-4 of examination-in-chief has stated that in the truck in jute and plastic sacks there was Ganja in 2-2 kg packets total packets 500 in number were kept in 50 sacks and Panchnama Ex. P/9 was made wherein 'C to C' part carries his signature and in panchnama there are signature of suspects. In para-5 of examination-in-chief he mentioned that packets were cut and they were mixed together for making them Samras and that Panchnama is Ex.P/12 was made, and from them two samples of 25 grams each were taken out and packets were made which were marked as Annexure A/1 and A/2. The remaining Ganja was kept in 25 sacks which they had taken with them to the spot and in each sack there were 40 kg of Ganja and they were sealed and numbered from 1 to 25 and all these sacks were marked as 'A' and the 50 sacks which were seized from the truck containing 37 sacks of Jute and 13 sacks of plastic in which Ganja packets were found were sealed separately in two sacks in equal number which are B-2 and B-3 and remaining packets of polythene, paper, tape and rope were also filled in two sacks equally and were marked as B and B-1.



35. Virendra Singh (PW-9) in para- 6 of his examination-in-chief, has stated that he had shown the accused person the brass seal by which the material was sealed, along with truck, Scorpio vehicle, Bilty papers, papers of the truck Panchnama Ex. P-20 was made wherein his signatures are on 'C to C' part. In paragraph-7 he has stated that under Section 57 of NDPS Act he had sent a detailed report to Senior Officers which is Ex. P-39. Seized material was kept in police station Malkhana. Sample packets were sent to FSL by letter no. Ex.P/40 for chemical examination and from there report Ex.P/41 was received and the seized material was found to be ganja. In Para 8 he has stated that remaining material 9 quintal 99 kg 900gm on 21.8.19 before Truck And Drug Disposal Committees and I.G. Police Rewa zone drugs were destroyed in Prism Cement factory and disposal certificate is Ex.P/44. Similarly, a seized truck was auctioned through DSP Police and Drug Committees on 23.11.19 and truck bearing No. MP20-HD-3344 (typographical error, correct no. is MP20-HB 3344) was sold to purchaser Manohar Lal Ahuja for Rs.4,02,000/- (Rupees Four Lakh Two Thousand). Auction certificate is Ex.P/45. In Para 9 he stated that proceeding under section 52-A was done by Naib Tehsildar Huzure, District Rewa, 2 samples A1 and A2 were drawn out, samples were sealed which are Articles CJA-1 and CJA-2. On sample A2 accused, witnesses and Police Officer signed. The Packet A1 received from FSL Sagar is Article CJA-4.

36. Virendra Singh (PW-9) in para-15 of his cross-examination admitted that no objectional material was found from the vehicle Scorpio. He further admitted that on the basis of memorandum of accused Veer Singh nothing incriminating was found from accused Manoj Pandey which would connect him with other co-accused. He further admitted that between Scorpio and truck there



was a distance of 200 meter. In cross examination in Para 19, this witness admitted that after drawing of samples 10 quintals Ganja remained.

37. PW-10 Naib Tehsildar Yatish Shukla has verified the proceeding under Section 52-A of the NDPS Act wherein he stated that he drew 50-50 grams of Ganja each and made 2 sample packets A1 and A2. The concerned document is Ex.P/46 and Photo verification is Ex.P/47 both documents have his signature on part A to A. In Para 2 of cross examination this witness has stated that the narcotic drug was kept in the police station.

### Conclusion

38. On total consideration of prosecution evidence in this case, it is seen that the panchnama photographs taken at the time of disposal of the property ganja before Executive Magistrate has not been exhibited and attached in charge-sheet neither concerning Rojnamcha Sanha have been annexed in charge-sheet as admitted by PW-8 Animesh Dwivedi, Inspector. Similarly, on perusal of the panchnama application Ex.P/47, it is seen that it is undated and this raises a suspicion. Similarly, disposal chart Ex.P/46 is also undated. In Ex.P/46 it is mentioned that out of the 25 sacks of 10 quintal 50 grams ganja seized and sealed by the seizure officer Sub Inspector Virendra Singh Parihar each carrying 40 kg ganja, from sack No.1 Naib Tahsildar Huzur Rewa, Yatish Shukla took sample of 50 grams each two packets were made and sack and packet were resealed and in remark column it is mentioned that sample was taken only from sack No.1 because all other sacks contained the same ganja, **now this remark** in Ex.P/46 is totally illegal as even without opening other 24 sacks how this presumption was drawn that other 24 sacks contained the same quality, quantity of narcotic substance ganja and as stated above even photograph is not filed in charge-sheet.



39. The above procedure fails in the light of the principle of law laid down by the Hon'ble Supreme Court in following cases :-

( i ) *Simarnjit Singh vs. State of Punjab, 2023, LiveLaw (SC) 570* , wherein relevant paragraphs 8 , 16 and 17 reads as under :-

8. In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case<sup>1</sup>, it was held thus: “15. It is manifest from Section 52-A(2)include (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.”

(ii) Mohammed Khalid & Another Versus The State Of Telangana (Crl appeal no. 1610 of 2023 judgment dated 01.03.2024 relevant paragraph 22 held as under :-

22. Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer PW-5 for preparing an inventory and obtaining samples in presence of the jurisdictional Magistrate. In this view of the matter, the FSL report(Exhibit P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot. The offence under Section 20(b)(ii)(c) deals with 17 production, manufacture, possession, sale, purchase, transport, import or export of cannabis. It is not the case of the prosecution that the accused A-3 and A-4 were found in possession of ganja. The highest case of the prosecution which too is not substantiated by any admissible or tangible evidence is that these two accused had conspired sale/purchase of ganja with A-1 and A-2. The entire case of the prosecution as against these two accused is based on the interrogation notes of A-1 and A-2.

(iii). *Bharat Aambale Versus State Of Chhatisgarh* ( Crl appeal no. 250 of 2025) relevant paragraphs 40, 44, 46, 47, 49, 50(v) 50 (vi) judgment dated 6.01.2025

40. Having gone through the materials on record, we are in complete agreement with the reasoning of the High Court. Although, from the testimony of PW-15 i.e., the officer-in-charge of the police station where the seized substance was forwarded it may appear that the seized substances were simpliciter mixed together without following the procedure of segregating similar packets of same quality and nature into lots and thereafter taking representative samples therefrom, yet a closer



reading of the Trial Court's judgment would reveal that the police officers herein had duly followed the procedure prescribed to the letter and spirit.

44. The Trial Court in para 34 has clearly observed that all 73 packets that were seized were opened and the contents inside each packet were matched and an identification memo was prepared in that regard. Thereafter, two samples of 100 gm each were prepared by drawing representative samples / mixed samples and thereafter the remaining packets were sealed. The relevant observations read as under: - "All the 73 packets were opened and the contents inside them were matched and an identification panchnama was also prepared. Two sample packets of 100 grams each were prepared from the mixed ganja, after which two sample packets of 100 grams each and the remaining ganja were filled in 6 plastic bags and sealed and seizure proceedings were carried out.

46 Even otherwise, if the contention of the appellants was to be accepted in toto such procedural lapse has absolutely no bearing on the overall case of the prosecution and by extension the conviction of the appellant inasmuch as the entire material on record clearly establishes the recovery and seizure of the ganja at the instance of the accused.

47. Before we close this judgment, we may address one another aspect as regards Section 52A of the NDPS Act. Wherever any non-compliance or contravention of either the provision or the Rules / Standing Order(s) thereunder is alleged, the same must be something tangible and not a mere bald assertion or superficial claim. The accused must impute something palpable to make good its case that there has



been non-compliance of the mandate of the said provision.

49. However, a close reading of the aforesaid decision reveals that this onus on the prosecution will only encumber once such an issue of non-compliance arises for consideration. Although, we are in complete agreement with the aforesaid observations inasmuch as it would be for the prosecution to establish and prove compliance of Section 52A of the NDPS Act, yet at the same time, we are of the considered opinion, that mere assertion by the accused that there has been non-compliance of the said provision may not be sufficient. The initial burden will always be on the accused to lay down the foundational facts for establishing that there has been a non-compliance of Section 52A of the NDPS Act, either by leading evidence of their own or by relying upon the evidence of the prosecution itself such as by putting direct and specific questions to the police officers and key witnesses. Such burden on the accused to establish contravention of Section 52A of the NDPS Act will only be on the mere preponderance of probabilities, whereas once the foundational facts are established that raises an issue as regards the non-compliance of Section 52A of the NDPS Act, the onus will entirely be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

50. We summarize our final conclusion as under: -

(V) Mere non-compliance of the procedure under Section 52A or the



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

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

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

(iv). *Surepally Srinivas Versus The State Of Andhra Pradesh (Now State Of Telangana)* (Crl appeal no. 1474 of 2025) judgment dated 25.03.2025 relevant paragraphs 14 and 15:

14. In the present case, from the evidence on record, it can be seen and it is clear that the seized contraband was not properly sealed. Coupled with this is the fact of the seized contraband not being produced before the trial court prior to 3rd July, 2010. It is difficult to accept the prosecution case that though there may not have been strict compliance



of Standing Order No.1/89, the seized contraband was not tampered at all. Keeping of the seized contraband by PW-3 in a separate room in his office for fifteen days could give rise to an allegation that the seized contraband was by itself substituted and some other items planted to falsely implicate the accused. To avoid suspicious circumstances and to ensure fair procedure in respect of search and seizure, it is always desirable to follow the standing order which provides suitable guidance for the officers investigating crimes under the NDPS Act. Should there be any departure, the same must be based on justifiable and reasonable grounds. We are, satisfied, on appreciation of the evidence on record, that the possibility of tampering during this fifteen-day period cannot be totally ruled out and that not only has there been no substantial compliance of the standing order, the departure has also not been justified.

15. We have also found from the materials on record that there has been clear non-compliance with the provisions contained in Section 52-A of the NDPS Act. Either possibly due to lack of experience of the investigating officer or his lack of knowledge of the relevant provisions of the NDPS Act, there were lapses which were duly noted by the Sessions Judge. Thus, we are unable to hold that there was primary and reliable evidence before the trial court in respect of the offence committed. The onus of proving that compliance 7 of 7 with Section 52-A did not affect the case of the prosecution has not been duly discharged by the prosecution.

(v) Hon'ble Bench of this court in *Vishal Shahni vs State of MP*. (Crl. APPEAL NO. 4576 of 2023) judgment dated 29/02/2024 in para 10 held as under:

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 tampered with:

Provided further that seized concealing material such as 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 9 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.

the 10 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.

40. Therefore, for non-compliance of procedure as prescribed in Section 52-A of NDPS Act wherein PW-1 Sub Inspector Mahendra Singh stated that two samples of 50 grams each were taken which is contrary to the prosecution case. Samples at the time of seizure on spot on 22/01/2019 were not taken before the Magistrate. The entire ganja was not produced for inspection of the court at the time of trial because it was already destroyed as per Drug Disposal Rules but their primary evidence photographs were neither attached nor exhibited in the case. Rojnamcha Sanha of drug disposal proceeding was also not produced even sampling procedure was faulty. Magistrate took samples from one sack only. Many panchnama were undated raising a serious doubt about the fairness in procedure of the investigation and it is the settled law that harsher the punishment in cases where police is the complainant and investigator then rules of procedure should be strictly followed but in this case the whole procedure adopted by the police and Magistrate is faulty and doubtful, therefore, judgment of the trial Court cannot be upheld for the reasons mentioned in this judgment.

41. Accordingly, for the reasons mentioned above, this appeal is allowed and



judgment dated 20/03/2023 of convicting the appellants for the offence as mentioned in Para-1 of the judgment are set aside. Accordingly, appeal is **allowed and disposed of.**

(VIVEK AGARWAL)  
JUDGE

(AVANINDRA KUMAR SINGH)  
JUDGE

VKT