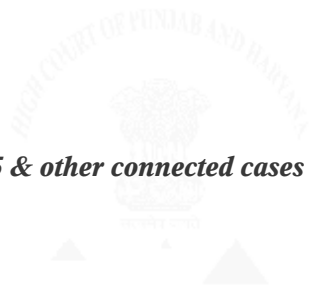


IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- (1) **CRA-S-5190-SB-2015**
Reserved on: 10.09.2024
Date of Decision : 18.09.2024
- DEEPAK KUMAR
STATE OF PUNJAB
- V/S
- ...Appellant
...Respondent
- (2) **CRM-M-40312-2016**
- GURPREET SINGH @ TEETU @ PREET
STATE OF PUNJAB
- V/S
- ...Petitioner
...Respondent
- (3) **CRA-S-1254-SB-2016**
- AMARJIT KAUR
STATE OF PUNJAB
- V/S
- ...Appellant
...Respondent
- (4) **CRA-S-1953-SB-2016**
- RAN SINGH @ MOGI
STATE OF PUNJAB
- V/S
- ...Appellant
...Respondent
- (5) **CRA-S-2828-SB-2016**
- RAMANPREET SINGH
STATE OF PUNJAB
- V/S
- ...Appellant
...Respondent
- (6) **CRA-S-3343-SB-2016**
- HARPREET SINGH @ BILLA
- V/S
- ...Appellant



CRA-S-5190-SB-2015 & other connected cases

-2-

STATE OF PUNJAB

...Respondent

(7)

CRA-S-399-SB-2016

MOHD SHAKIL

...Appellant

V/S

STATE OF PUNJAB

...Respondent

(8)

CRA-S-4412-SB-2016

AJMER KAUR

...Appellant

V/S

STATE OF PUNJAB

...Respondent

(9)

CRA-S-692-SB-2016

MANPREET SINGH @ MANI

...Appellant

V/S

STATE OF PUNJAB

...Respondent

(10)

CRA-S-2302-SB-2017

HARPAL SINGH @ RAJU

...Appellant

V/S

STATE OF PUNJAB

...Respondent

(11)

CRA-S-5368-SB-2015

KULDEEP KUMAR

...Appellant

V/S

STATE OF PUNJAB

...Respondent

(12)

CRA-S-4020-SB-2016

BIMLA KAUR

...Appellant

V/S

STATE OF PUNJAB

...Respondent

(13)

CRA-S-4116-SB-2018

U T CHANDIGARH

...Appellant

V/S

VIPIN

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMAA**

Present : Mr. L.S. Sekhon, Advocate and
Ms. Nitika Sekhon, Advocate for the appellant(s).

Mr. Abhishek Sahu, Advocate for
Mr. B.S. Bhalla, Advocate,
for the appellant in CRA-S-2828-SB-2016.

Mr. Deepender Singh, Addl. Advocate General, Punjab with
Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab and
Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Rajeev Vij, Addl. Public Prosecutor for U.T. Chd.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since all the criminal appeals/petition involve a substantial question of law relating to whether the whole case property is to be sent or whether a sample is to be sent from each vial or strip of tablets to the FSL for chemical examination, as such, the said common question of law is amenable to be decided through a common verdict.
2. The lead appeal in the bunch of 13 appeal(s)/petition is CRA-S-5190-SB-2015. The relief as claimed in the appeals (supra) is extracted hereinafter.

“That the impugned judgment passed by the Learned Special Court, Sangrur under the Narcotic Drugs and Psychotropic Substances Act 1895 (hereinafter referred to as the Act) is in contravention to the settled tenets of law governing and interdicting the provisions of the Act and thus, finding of conviction recorded by the Trial Court against the Appellants as well as consequential sentence imposed upon the appellants is completely otiose, nugatory and non-est in the eyes of law.”

3. However, before proceeding to determine the validity of the espousal (supra), as raised in the lead criminal appeal (supra), it is deemed imperative to refer to the order of reference made on 02.08.2017, whereby the Single Bench of this Court after formulating the hereinafter extracted question of law, ordered that the said question of law be decided by a Larger Bench of this Court.

“xxx

In the present cases the recovery is of manufactured drug i.e. Rexcof or Phinotil etc. In my view, there is no need to send all the incriminating bottles or tablets to the FSL for examination or to take sample from each vial or strip of tablets. Even in the case of loose tablets, in my view, sample can be drawn by making it homogenous and can be sent to the FSL. If the whole case property is to be sent then there is no purpose for separating of sample from the case property. Even otherwise, the case property is generally produced before the Court or if it is not destroyed during the pendency of the trial, the Court has power to summon the case property to see batch number etc. The case property is also produced before the Court under Section 52-A of the NDPS Act and the Court also draw the representative sample. Therefore, in these circumstances, I find that as a substantial question of law arises whether the whole case property is to be sent or whether sample

is to be sent from each vial or strip of tablets to the FSL for chemical examination. As this finding will affect a large number of cases pertaining to the States of Punjab, Haryana and Union Territory, Chandigarh, therefore, the matter is referred for decision by the Larger Bench.

The Registry is directed to put up these cases before Hon'ble the Chief Justice for constitution of Larger Bench.”

4. Consequently, under the orders of the Hon'ble Chief Justice, the instant Larger Bench has been constituted.

5. All the counsels appearing today before this Court have been heard at length.

6. Before proceeding to render an answer to the substantial question of law (supra), the making of allusion(s) to the standing order No.1/89, as drawn by the Government of India, Ministry of Finance (Department of Revenue), is of utmost importance. In clause 2.3 and 2.4 thereof, clauses whereof becomes extracted hereinafter, it becomes elucidated that the quantity to be borne in each sample, thus for a chemical test becoming made thereons at the laboratory concerned, shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances.

“2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 *In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.”*

7. However, it has been further elucidated therein, that if seizure of opium, ganja and charas (hashish) takes places, thereupon the sample to be derived from the bulk is to be weighing 24 grams, thus for the same becoming sent for testings to the laboratory concerned. Similarly, for the duplicate sample also, the same or similar quantities become envisaged therein. Moreover, the seized drugs in the packages/containers, become thus prior to the samples (supra) becoming drawn from the bulk, rather ordained to become well mixed or being homogeneously mixed. However, in case of the seizure taking place of a single package or container, thereupon it is contemplated in the above extracted provisions, that only one sample in duplicate shall be drawn.

8. Furthermore, the Government of India, Ministry of Finance (Department of Revenue), has issued a notification, on 23.12.2022, wherein, in Chapters II and III thereof, certain provisions are carried in Clauses 4 to 11 thereof. The said clauses become extracted hereinafter.

“4. Designation of godowns. – (1) *The godowns for storage of narcotic drugs, psychotropic substances, controlled substances, conveyance and other articles seized under the Act shall be designated by,-*

(a) the department and agencies of the Central Government whose officers have been delegated powers of an officer-in-charge of a police station under section 53 of the Act;

(b) The State Police and the department and agencies of the State Government whose officers have been delegated powers of an officer-in-charge of a police station under section 53 of the Act.

(2) Godowns referred to in sub-rule (1) shall be identified taking into consideration the security aspect and juxtaposition to court of law and such godowns shall be placed under the over-all supervision and charge of an officer of Gazette rank of the department and agencies referred to in sub-rule (1).

5. Deposit in godowns. – *(1) All seized materials referred to in sub-rule (1) of rule 3, after seizure under the Act shall be deposited by the seizing officer in the nearest godown designated under rule 4 within forty-eight hours from the time of seizure alongwith a forwarding memorandum in Form-1:*

Provided that the said time period may be relaxed by further twenty-four hours after providing of reasonable justification by the officer to whom the seized material has been forwarded under sub-section (3) of Section 52 of the Act.

(2) The officer in-charge of a godown, before giving an acknowledgement of receipt in Form-2, shall satisfy himself that the seized materials are properly packed, sealed and in conformity with the details mentioned in Form-1.

(3) The officer, who had seized the material, shall hand over the acknowledgement of receipt of seized material in Form-2, along with all other documents relating to the seizure, to the Investigating Officer for further proceedings.

6. Storage of seized material in godown. – *(1) After receipt of the seized material, the officer in-charge of the godown shall ensure that the seized material is properly arranged, case-wise, for quick retrieval.*

(2) The officer in-charge of a godown shall maintain a register of material received in the godown in Form-3.

(3) All seized material, excluding the conveyances, shall be stored in safes and vaults with double lock.

7. Inspection of godown. – (1) The department and agencies referred to in rule 4 and the State Police shall designate an Inspecting Officer for each godown, who shall be higher in rank to that of the officer in-charge of the godown.

(2) The Inspecting Officer referred to in sub-rule (1) shall make periodical inspection of the godown, at least once in every quarter, and shall record his remarks in the godown register in Form-3 with respect to security, safety and early disposal of the seized material.

(3) The departments and agencies, referred to in rule 4 and the State Police shall maintain periodical reports and returns to monitor the safe receipt, deposit, storage, accounting and disposal of seized materials under the Act.

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.”

9. Tritely put, in the above extracted statutory provisions, it has been mandated, that the representative sample to be derived from the bulk rather is required to be so drawn only after the entire seized bulk becoming homogeneously mixed. Moreover, thereins also exist, thus provisions relating to the apposite quantities becoming enclosed in the sealed cloth parcels, besides exist provisions with respect to prompt dispatches being made of the apposite samples for therebys testing being made at the laboratory concerned. Moreover it also becomes ordained therein, that

expeditious testings, thus are required to be made by the Chemical Examiner concerned, vis-a-vis the stuff enclosed in the samples parcels, as become sent to him, for analyses thereons becoming made. Imperatively also therein becomes underlined the necessity of remnants of samples becoming returned with reference to the test memo, to the office from where the samples were received, but within three months after analysis becoming made thereovers at the Laboratory concerned.

10. However, immediately after acceptance of the test report by the Court of the Magistrate, the duplicate sample held by the Investigating Officer becomes ordained to become deposited in the godown referred to in Rule 5 along with the remnants of the sample.

11. The inference(s) is to be drawn therefroms are that, the said above extracted provisions, relate to the inventory becoming drawn in terms of Section 2 of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), thus in the presence of the Magistrate, by the investigating officer concerned. The said provisions becomes extracted hereinafter.

“[52A. Disposal of seized narcotic drugs and psychotropic substances.—[(1) xxx

(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, psy-

chotropic 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 1[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.]”

12. Though, the said reference does not cover the subject relating to the creation of storage facilities in the police malkhana concerned, nor the subject reference relates to prompt dispatches being made of the samples to the laboratories concerned, rather for ensuring that the stuff enclosed therein becoming promptly examined nor also though the subject appertains to expeditious testings being made vis-a-vis the stuff inside the sample parcels.

Moreover, though the subject at hand also does not relate to the return of the tested sample to the office wherefrom it became received nor does it deal with the said returned parcels, thus enclosing therein the stuff examined, becoming produced before the Court concerned along with the test report.

13. Nonetheless, even if the above aspects do not fall within the subject reference, but the alluded to (supra) provisions existing in the notification (supra) do beget striking conclusion qua:

a) There being an imperative necessity of testings being made of the stuff inside the sample parcels.

b) The inventory as becomes prepared in the presence of Magistrate concerned, in terms of Section 52A of the Act, but without testings of the stuff enclosed in the sample parcels, thus being made at the laboratory concerned, rather *per se* not acquiring the utmost evidentiary vigor.

14. Moreover, therein as an obligation becomes cast upon the police department concerned, to ensure the creations of adequate storage facilities in the malkhanas concerned, as well, as an obligation becomes cast upon the investigating agencies, to make prompt dispatches of the samples to the laboratories concerned, so that, the enclosed therein stuff becomes examined.

15. Tritely also the return, of the examined stuff inside the said parcels, to the police malkhana concerned, thus subsequent thereto apposite production in Court along with the test report becomes enshrined therein, to be an imperative obligation made upon all concerned, whereafters, thus on

conclusion of trial the produced in Court case properties is to be ordered to be deposited in the godown concerned.

16. In paragraph 35 of the judgment rendered by the Hon'ble Apex Court in **“Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, it has been enshrined that the alluded to (supra) necessities are the required to be proven *sine qua non*, thus for the charge drawn against the accused becoming declared to become unflinchingly proven.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

17. Now the above referred to notification(s) issued by the Government of India, appear to also become aprobated by the Hon'ble Apex Court, in a judgment rendered case titled as **“Gauter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993**. The above appears to be in tandem with the verdict rendered by the Hon'ble Apex Court in **“Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, relevant paragraph whereof becomes extracted hereinafter.

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken

from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

18. The ire point relating to the unneccessity, of laboratory testing being made of the entire recovered stuff, but is grooved in the factum, that the hereinabove alluded to provisions as carried in the notification (supra), do cast an obligation upon all concerned, to ensure that only after the entire seizure becoming homogeneously mixed, qua thereafters from the bulk rather residue samples becoming drawn but in the mode, manner and quantities detailed hereinabove.

19. It appears that given the immensity of the weight of the apposite bulk seizure, that therebys after the concerned, thus homogeneously mixing the bulk seizure, hence evidently of an immense weight, whereafters the concerned become enjoined to draw samples from the bulk. Reiteratedly, the immensity of the weight of the apposite seizure is curable by the drawings of residue samples from the bulk, but only when prior thereto rather the entire bulk becomes homogeneously mixed. Consequently, therebys the constraining factor of inadequacy of spaces within the laboratory concerned, wherebys the laboratory concerned, may on account of shortage of spaces there, thus may become precluded to examine the entire bulk, thus appears to become eased. As such, to avoid the immense load of the entire bulk seizure travelling to the laboratories concerned, that derivative samples from the bulk are envisaged but only after such derivation taking place rather from the bulk but only after all concerned, reiteratedly homogeneously mixing the entire bulk seizure, otherwise not.

20. Conspicuously, the hereinabove extracted respective standing order and notification become declared by a judgment rendered by the Hon'ble Apex Court in case titled as **"Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008,** to be holding a mandatory character and also become ordained therein to be requiring completest adherence. Contrarily on breach thereof becoming made, therebys may be the accused would become entitled to an acquittal.

21. Furthermore, in case the entire bulk is homogeneously mixed and derivative samples are derived therefrom, resultantly the effect thereof would be that, the incriminatory finding as become recorded on the stuff inside the sample parcels as sent to the laboratory concerned, thus would acquire a presumption of truth, irrespective of the fact that the entire bulk wherefrom the derivative samples are borrowed, but after the entire seizure becoming homogeneously mixed, rather not becoming sent for analyses thereovers, being made at the laboratory concerned. Contrarily, in case the entire bulk seizure remains not homogeneously mixed, thereupon the charge drawn against the accused appertaining to the weight of the entire weight of the seizure, *de hors* affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, rather would come under a cloud of doubt, whereupon benefit thereof would accrue to the accused.

22. As an illustration, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two;

then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity, but proper procedure has to be followed, without which the results would be negative.

23. Reiteratedly, in case, the derivative samples from the bulk are drawn but without the entire bulk seizure becoming homogeneously mixed, thereupon the laboratory examination of the stuff inside the sample cloth parcels rather would not prove the charge relating to the weight of the entire bulk seizure taking place, at the crime site, thus from the alleged conscious and exclusive possession of the accused.

24. Contrarily, in case the entire bulk seizure is not homogeneously mixed or when the narcotic drug(s) or psychotropic substance, does become carried in different vials or in different packets, besides upon the said mode(s) of carryings of (supra), becomes not homogeneously mixed, thereupons, even if a fragment or a portion thereof becomes extracted from one vial or only from one packet, thus for creating a residue parcel, it would beget the ill consequence of the accused becoming entitled to an acquittal. Resultantly, when despite the evident absence of apposite homogeneous mixings of the entire bulk, be it borne in packets, containers or be it being carried in different vials, besides when only a part of the fragment or portion of the seizure or only one or two of the vials, yet the said extracted fragment becomes sent for examination to the laboratory concerned, but the apposite affirmative laboratory examination as becomes made vis-a-vis the stuff inside the sample parcels, rather would not make the charge drawn against

the accused, thus for his allegedly exclusively and consciously possessing, the entire seizure, thus also becoming efficaciously proven.

25. Conspicuously when for the drawing of an effective conclusion, that the charge drawn against the accused for his allegedly consciously and exclusively possessing, the entire bulk, but requires that only after homogeneous mixing of the bulk seizure, taking place, be it of psychotropic substance, in vials or in any other mode or be it with respect of narcotic drugs carried in whatsoever mode, rather residues therefrom becoming drawn, whereafter an affirmative finding on the stuff inside the residues, is required to be made by the Chemical Examiner concerned.

Sample procedure in respect of psychotropic substance

26. In case no batch number is mentioned, in the recovered psychotropic substance, thus carried in the form of tablets/strips, thereupon at least one of the tablets from all the relevant strips rather is to be extracted, as residue sample and the same is required to be sent for testings being made thereovers, at the laboratory concerned. However, in case batch number is mentioned in all the recovered bulk strips, thereupon only one of the tablets in the entire haul is required to be sent for testings being made thereovers, at the laboratory concerned. However, the quantity of the sample to be derived from the bulk is to be in terms of the provisions (supra), but with a further safeguard that not only vis-a-vis the entire bulk but also vis-a-vis the sample parcel, the relevant batch number is required to be made on the covers of each of the sealed cloth parcels.

27. Therefore, the sampling procedure in respect of bulk seizure of the apposite psychotropic substance, ordains that the making of the bulk

seizure, besides derivation of a sample parcel, therefroms would be vitiated unless adherence becomes made to the hereinafter extracted underlined canons.

“(v) It has also come in the evidence that there was no batch number, name of manufacturer or other details given on the bottles of Rexcof syrup and therefore, the sample of one bottle taken, was also not in accordance with the procedure laid down under the aforesaid standing order. In view of the judgment of this Court in Harjinder Singh (supra), the sealed sample cannot be held to be a representative parcel of the entire bulk allegedly recover from the appellant”

28. In view of the above, there is no requirement for the sending of the entire bulk seizure to the laboratory concerned, but only the residue therefrom in terms (supra), rather is to be sent to the laboratory, thus for the relevant laboratory testings being made. However, only after the apposite homogeneous mixings taking place, besides upon the seizure of bulk of any psychotropic substance taking place, and with batch numbers becoming reflected on the cover of each of the strips, thereupon at least one of the tablets inside the seized bulk strips is to be extracted for analysis thereons being made at the laboratory concerned. Moreover, if the prohibited tablets become carried in strips which do not carry thereons batch numbers, thereupon yet adherence is to be made to the standing order (supra).

29. Accordingly the substantial question of law is answered.

30. Be listed before the Roster Bench concerned.

(SURESHWAR THAKUR)
JUDGE

18.09.2024

Ithlesh

Whether speaking/reasoned:- Yes/No

Whether reportable:

Yes/No

(SUDEEPTI SHARMA)
JUDGE