



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945

CRL.A NO. 322 OF 2021

AGAINST THE JUDGMENT DATED 27.04.2021 IN SC NO.145 OF 2019

OF FIRST ADDITIONAL SESSIONS COURT, THRISSUR

APPELLANT/2ND ACCUSED:

SIPAHI KUMAR,
AGED 38 YEARS,
S/O.MANGANISAH, MOTIHARI TALUK, CHANDARAHIIYA
VILLAGE, JEEVADHRADESOM,
EAST CHAMPARAH DISTRICT, BIHAR STATE.

BY ADVS.

C.DHEERAJ RAJAN
ANAND KALYANAKRISHNAN

RESPONDENT/STATE:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA AT ERNAKULAM- 682 031.

SMT.NIMA JACOB(PUBLIC PROSECUTOR)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27.07.2023, ALONG WITH CRL.A.545/2021, THE COURT ON
31.07.2023 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945

CRL.A NO. 545 OF 2021

AGAINST THE JUDGMENT DATED 27.04.2021 IN SC NO.145 OF 2019

OF FIRST ADDITIONAL SESSIONS COURT, THRISSUR

APPELLANT/ACCUSED NO.1:

**JAYMANGAL SAH,
AGED 43 YEARS,
S/O. LAKSHMAN, SAH, JEEVADHRA DESOM,
CHADRAHIYA VILLAGE, MOTTIHARI TALUK,
EAST CHANBARAN DISTRICT, BIHAR
BY ADVS.**

**JOHNSON VARIKAPPALLIL
P.MOHAMED SABAH
SAIPOOJA(K/001130/2016)
LIBIN STANLEY(K/250/2015)**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682 031**

SMT.NIMA JACOB (PUBLIC PROSECUTOR)

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27.07.2023, ALONG WITH CRL.A.322/2021, THE COURT ON
31.07.2023 DELIVERED THE FOLLOWING:**

**JUDGMENT**

Dated this the 31st day of July, 2023.

Both these appeals are originated from the judgment of 1st Additional Court of Sessions, Thrissur (for short, 'the court below') on 27.04.2021 in S.C No.145/2019.

2. The above case was the outcome of a crime registered as Crime No.33/2018 by Excise Range Office, Thrissur. The appellant in Crl.Appeal No.545/2021 is accused No.1 and he was found guilty, convicted and sentenced to undergo rigorous imprisonment for 15 years and to pay fine of Rs.1,00,000/- under Section 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (For short, 'the N.D.P.S Act') and to undergo a further period of rigorous imprisonment for six months in default of payment of fine.

3. Accused No.2 is found guilty, convicted and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.1,00,000/- under Section 20B(ii)(B) NDPS Act and to undergo rigorous imprisonment for six months, in default of payment of fine.

4. Aggrieved by the judgment, both accused have preferred the appeals aforesaid. As per the allegations of the



prosecution, on 17.09.2018 at about 12.30 p.m, the Excise party led by the Excise Inspector of Excise Range Office, Thrissur, restrained the accused on the basis of some suspicion at a place near the bus waiting shed at Mannuthy College of Veterinary and Animal Sciences. Body search of the accused were conducted and 4.060 Kgms of hashish was seized from the bags carried by each of them. The accused were arrested from the spot and the hashish was seized from them.

5. Crime No.33/2018 was registered. Investigation was proceeded with and on culmination of it, a Final Report was laid against the accused before Court of Sessions, Thrissur chargesheeting them respectively for the aforesaid offences. The case was made over by that court to the Ist Additional Court of Sessions, Thrissur for trial and disposal. Production warrant was issued to the accused who were in judicial custody then and produced before Court. Copies of the relevant documents proposed to be relied by the prosecution were served on each of them. Accused No.2 was represented by a counsel of his own choice. Accused No.1 was given the aid of a counsel at the expense of the State. The learned Public Prosecutor, the counsel representing accused No.2 and the counsel appointed



on state brief for accused No.1 were heard. Documents on the files of the court relating to the case on hand were pursued. Charge was framed against both the accused for offences punishable under Section 20(b)(ii)(C) NDPS Act. It was read over and explained to each of them through a translator appointed by the court. Each of them pleaded not guilty and claimed to be tried. Those were translated to the court by the translator and therefore was recorded in Malayalam.

6. The trial was commenced. On the side of the prosecution, PWs 1 to 5 were examined, Exts.P1 to P21 were marked and MO1 to MO19 were identified. On completion of the prosecution evidence, each of the accused were questioned based on all incriminating circumstances brought in evidence by the prosecution. The answers given by him were recorded in Malayalam with the assistance of a translator. Questions put to each of them were denied by the accused and each raised identical claims of total innocence and false implication.

7. The learned Public Prosecutor as well as the learned defence counsel were heard under Section 232 of the Code of Criminal Procedure, 1973 (For short, 'the Cr.P.C'). Sufficient grounds having not been made out to record an order of



acquittal of each of the accused, they were called upon to enter on their defence. The accused did not adduce evidence. He relied on the contradictions brought during examination of the prosecution witnesses and marked in evidence as Ext.D1 and D2. The oral as well as documentary evidence adduced by either sides were appreciated and the arguments advanced were evaluated and the trial court arrived at the finding that both accused are guilty and thus convicted and sentenced each of them.

8. The Detecting Officer, in the case is none other than the Excise Inspector attached to Excise Range Office, Thrissur, who was examined by the prosecution as PW4. Evidence was tendered by him to the effect that on 17.09.2018, along with other Excisemen attached to Excise Range Office, Thrissur, he reached at the bus waiting shed situated near the College of Veterinary and Animal Sciences, Mannuthy. The accused informed him that he knows only Hindi. Therefore, he conveyed to each of them in Hindi language that the body search of them is required and they have the right to demand the presence of a nearby Magistrate or a Gazetted Officer to witness the same. Notice stating that factum was also served on



accused Nos.1 and 2 and copies of which are marked respectively as Exts.P3 and P4. The thump impression of each of them was also obtained in Ext.P3 and P4. The accused denied to have the presence of anyone to witness their body search. Though replied to that effect, the presence of the Assistant Excise Commissioner, Thrissur, who is also a Gazetted Officer was requisitioned to be present at the spot through a member of the Excise Party. The Assistant Excise Commissioner, Thrissur arrived at the spot within 10 minutes. Then PW4 conducted search of his own body and made the accused as well as other people gathered there convinced that any illicit drugs was not carried by him. Bag carried by accused No.1 when opened in the presence of the Gazetted Officer, four chambers were found. A bedsheet was found kept folded inside and when opened, four black bars were found. Three similar bars were also found kept in another chamber of the bag. The bag carried by accused No.2 was also examined and three chambers were found. One black bar was found kept inside one chamber. All the bars found in the bags carried by the accused were identified by smelling, as Hashish. It was weighed and found to be 4.60 kgms in total. Arrest memos, arrest notices,



arrest intimations were prepared and each of the accused were arrested. The arrest memos and arrest notices prepared while arresting accused Nos.1 and 2 were marked in evidence respectively as Exts.P5, P6, P7 and P8. Copy of the requisition letter forwarded to Assistant Excise Commissioner is marked in evidence as Ext.P9. The hashish bars recovered were separately covered and sealed and the personal seal of PW4 was also affixed on those. Hashish bars seized from accused No.1 were marked as A,B,C,D,F and G. Labels carrying a brief description of the particular case and signatures of PW4 and witnesses and thumb impression of the accused were affixed on the hashish bars. The bags carried by each of the accused and the bedsheet seized from one of the bags were then packed and sealed. A seizure mahazar was prepared, which is marked in evidence as Ext.P1. Crime and Occurrence Report was registered and got marked in evidence as Ext.P10. Property list was also prepared and marked in evidence as Ext.P11.

9. The accused along with the properties seized and the records prepared were produced before the Magistrate on 17.09.2018. An inventory was also prepared and produced before the Magistrate. The contraband were returned by the



Magistrate to the Excise Range Office with a direction to produce it on the next working date. On its production as directed on 19.09.2018 with an inventory samples were drawn from the contraband in the presence of the Magistrate. A mahazar was also prepared for drawal of samples from the contraband seized, which is marked in evidence as Ext.P12. Signatures of the Magistrate, witnesses, PW4 and property clerk of the court were obtained in Ext.P12 mahazar. The inventory is marked in evidence as Ext.P13. An application was filed by PW4 before the Magistrate for obtaining an order to dispose of the property seized. Two samples each were collected by the Magistrate from the hashish bars and the balance left after drawal of samples were marked in evidence as MO12 and MO19. MO1 to MO8 are the covers by which the hashish bars were wrapped. Bags seized respectively from the 1st and 2nd accused were marked in evidence as MO9 and MO10. Bed sheet was also marked in evidence as MO11. The report forwarded by PW4 to the immediate superior as envisaged under Section 57 NDPS Act was marked in evidence as Ext.P17. Hashish seized respectively from accused Nos.1 and 2 weigh 3.441 kgms and 519 grams. Search lists was prepared with



respect to the seizure of the contraband from accused Nos.1 and 2 were also marked in evidence as Exts.P18 and P19.

10. PW4 deposed strictly in tune with the case of the prosecution. The Assistant Excise Inspector attached to the Excise Range Office, Thrissur, a member of the Excise Party led by PW4, responsible for the seizure of the contraband was examined as PW1. The version of PW1 corroborate with that of PW4 in material particulars. A labourer at Mannuthy Veterinary Unit was examined as PW3. According to him, on 17.09.2018, when he came out of his work place at about 12'o clock in the afternoon, to have lunch from his house, two people were found standing near the bus waiting shed. One among them was handing over some substance to the other and the latter was found receiving it and keeping it in the bag carried by him. They were perplexed on watching the vehicle of the Excise party proceeding towards. They were intercepted by the Excise party. Admittedly, the mahazar prepared from the spot was signed by him.

11. The Gazetted Officer whose presence at the spot was sought to witness the search of the body of the accused was examined as PW5. According to him, PW4 conducted his own



body search and made him convinced that any prohibited drugs was not in his possession. Thereafter, the body search of each of the accused were held but nothing was recovered therefrom. The bag carried by each of the accused were then opened. The bars found inside the bags carried by accused Nos.1 and 2 were recovered after preparing seizure mahazars. The bars were identified as Hashish. Those were packed and 'AK' the personal seal of PW4, was affixed. The accused along with the property seized from the spot were produced by PW4 before Excise Range Office, Thrissur. List of properties was prepared and the properties along with the accused were forwarded to Judicial First Class Magistrate Court, Thrissur, on 17.09.2018. The properties were returned with an endorsement to produce during the working hours on the succeeding day. Thus, those were produced further on 19.09.2018. List of properties were also forwarded. An inventory was prepared and produced before the court on 24.09.2018. The properties produced before the court were cross checked with the inventory produced and certified by the court as correct.

12. The learned counsel representing accused Nos.1 and 2 urged that Section 50 was not complied with prior to holding



the body search of each of the accused and therefore the search and seizure are illegal. According to him, both accused were conversant with Hindi only. According to PW4, having been informed that the accused know Hindi language only, he had explained to them in Hindi that their body search need to be conducted and they are entitled to have the presence of a Gazetted Officer or Magistrate to witness search.

13. According to PW4, the information regarding the right of the accused to have the presence of a Gazetted Officer or Magistrate to witness their body search was conveyed to them in Hindi, orally as well as in writing. The communication in writing was produced by the prosecution and marked in evidence, during trial as Exts.P3 and P4.

14. According to PW4, the accused denied to have the presence of a Gazetted Officer or a Magistrate to witness their body search. Even then, the presence of the Assistant Excise Commissioner was requisitioned and he arrived at the spot. The learned counsel urged that though it was stated by PW4 that the information regarding the right of the accused to have his body search in the presence of a Gazetted Officer or a Magistrate was conveyed to them in Hindi language both orally



and written, the communication in writing available with the records was found written only in Malayalam. A consent letter was also claimed by the witnesses of the prosecution to have been given by the accused in writing, was also prepared in Malayalam. True that, each of the accused were found to have affixed their thumb impression below the contents.

15. When the prosecution itself has got a case that the accused were conversant only with Hindi and not Malayalam, PW4 is bound to convey the statutory right envisaged under Section 50 of the NDPS Act, only in Hindi language known to each of them. In the case on hand the oral evidence of PW4 was that the right of the accused to have their body search in the presence of a Gazetted Officer or a Magistrate was conveyed to the accused in Hindi language, there is nothing on record to substantiate it.

16. Exts.P3 and P4 are found written in Malayalam and the thumb impression of each of the accused were affixed beneath, but those being prepared in a language not conversant to them, they cannot be said to have been effectively communicated of their right as envisaged under Section 50 NDPS Act.



17. Under Section 50 NDPS Act, the accused, who has been chargesheeted for any of the offences under the NDPS Act has got a right to seek the presence of a Magistrate or a Gazetted Officer to witness the search of his body. Judicial pronouncements have interpreted the wordings of the provision in such a manner that the accused must be communicated of his right to have the presence of a Gazetted Officer or Magistrate prior to the conduct of search itself and only on himself being convinced of his right that, he would be able to exercise his option to have the presence of either of them to witness the body search.

18. As rightly pointed out by the learned counsel, the right of the accused to have his body search conducted in the presence of a Gazetted Officer or Magistrate as contemplated under Section 50 of the NDPS Act was evidenced as not conveyed to each of the accused in the language known to them. Therefore, it can only be held that the accused was not effectively communicated of his right as envisaged under Section 50 NDPS Act and therefore, the mandatory requirements of Section 50 NDPS Act have not complied with. The consequence of which was that body search itself is illegal.



19. In the body search of the accused, properties of incriminating nature were not recovered. Recovery of the contraband was from the bags carried by each of the accused and the substance recovered was convinced *prima facie* as hashish, by PW4 and other people accompanying him. The samples drawn from the property were forwarded to the Chemical Examiner's Laboratory for examination and those were ascertained in the analysis held there as hashish. The certificate issued therefrom was marked in evidence as Ext.P21.

20. For establishing that the contraband was possessed by each of the accused and recovered from their possession, the oral evidence of PW1, PW3, PW4 and PW5 were relied on by the prosecution. PW4, the Excise Inspector has deposed strictly in tune with the case of the prosecution. The officer who accompanied PW4 to the spot and claimed to have witnessed the detection, search and seizure was examined as PW1. PW1 does not have a claim that he knows Hindi. According to him, what have been transpired among PW4 and each of the accused were narrated to him by PW4 in Malayalam. He also does not raise a claim that he heard PW4 conveying to the accused about their rights under Section 50 NDPS Act in Hindi. Documentary



evidence is also not forthcoming to establish that the communication was made by PW4 to each of the accused in Hindi. Thus, the version of PW1 did not corroborate with that of PW4 on that aspect.

21. PW4 alone gave the version that the accused were conveyed of the grounds of their arrest. PW1 though claimed to have been present at the spot at the relevant time did not depose accordingly.

22. PW3 was examined by the prosecution to have an independent support its case. According to PW3, he was a labourer at Mannuthy Veterinary Unit and at about 12'o clock when he proceeded from his workplace to have lunch from home, two persons were found standing at the nearby Bus stop and one among them handing over some substance to the other and the latter keeping it in his bag. He also found the Excise Jeep proceeding towards those persons and the officials interacting with them. He heard the accused agreeing for the conduct of their body search by PW4. According to him, PW5 was requisitioned by PW4 and when he arrived at the spot, the latter conducted his own body search. Then he searched the body of each of the accused, but nothing of incriminating nature



was recovered. Then the bags carried by each of them were examined and the contraband were recovered. PW3 does not have a case that he heard PW4 communicating to the accused in Hindi language. Thus the version of PW3 did not corroborate with that of PW4. PW5 is the Gazetted Officer whose presence was brought to the spot to witness the body search of the accused. PW5 was brought to the spot inspite of the denial of the accused to have him as a witness during search of their body. As already stated, the right of the accused under section 50 of NDPS Act was not effectively communicated to each of them. Therefore, the search of the body of the accused was not in conformity to that provision and therefore, is illegal.

23. The learned counsel for the appellant has relied on **State of Rajasthan vs. Paramanand and Another** [2014 KHC 4138] where it was held that if only a bag carried by a person is searched without the person carrying it, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application.

24. The learned Public Prosecutor also relied on **Dayalu Kashyap Vs. the State of Chhattisgarh** [2022 LiveLaw



(SC) 100] where an argument was advanced by the counsel representing the appellant/accused that when personal search is vitiated for violation of Section 50 of the NDPS Act, the recovery made otherwise can only be treated as vitiated, but the court was declined to take such an extended view. The court while holding so, is found to have considered the dictum in **Paramanand** supra also.

25. The learned Public Prosecutor has also relied on **State of Punjab vs. Baljinder Singh and Another** [2019 KHC 7150], where, the Hon'ble Apex Court held:

“Mandate of Section 50 of the Act is confined to ‘personal search’ and not to search of a vehicle or a container or premises. In case where search of vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non compliance of Section 50, as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle”.

26. Therefore, the position of law is well settled that compliance of Section 50 is mandatory only with respect to recovery of contraband from the search of the body of a person and not with respect to search of a vehicle or container or bag or premises and recovery therefrom. In the case on hand, as



already discussed, body search was held in the presence of a Gazetted Officer but without effectively communicating the right of the accused to have the presence of a Gazetted Officer or Magistrate to witness the search. But, the contraband having been recovered from the bags carried by each of them, the recovery cannot be said to be the result of an illegal search.

27. The next question to be considered is whether material discrepancies loom large in the versions of PW3 and PW4 so as to disbelieve the prosecution case as such. According to PW3, he left the compound of Veterinary College, Mannuthy, for having lunch, at 12.30 p.m. The prosecution case was that the contraband was recovered from the bags carried by the accused at 12.30 p.m. From the arrest memos marked in evidence as Exts.P5 and P7, the arrest of the accused was also at 12.30 p.m. As per the prosecution case, after recovery of the contraband from each of the accused that the accused were arrested. If the version of PW3 that he came out from the compound of Mannuthy Veterinary College only at 12.30 p.m, and as disclosed from his version itself, several intervening formalities followed prior to the arrest of the accused, viz, apprising each of them of their right, denial by



them orally as well as in writing, requisitioning of PW5 and his arrival at the spot, conduct of body search by PW4, conduct of body search of each of the accused, conduct of search of the bags carried by each accused and recovery of contraband therefrom. As per the version of PW3, the accused were arrested after the seizure, making them convinced that the unauthorized possession of the contraband was the ground of his arrest. But in the arrest memos marked in evidence as Exts.P5 and P7, the grounds of arrest was not made mention of. PWs 1, 3 and 5 have also not spoken about communication of grounds of arrest to each of the accused prior to their arrest. The accused were familiar with only Hindi, but PW4 did not say that the grounds of arrest was communicated to them in Hindi.

28. The punishment provided under the NDPS Act are stringent ones and therefore directions in the form of safeguards have been provided under various provisions like Section 50, 52, 53, 54 and 57 NDPS Act. When witnesses of the prosecution have no consistent say regarding the time of seizure, recovery of the contraband and various relevant aspects of the prosecution case. The prosecution case itself appears to this Court doubtful.



29. In the case on hand without a request being made by the accused for presence of any officials categorised under Section 50 NDPS Act, to witness his body search, the presence of the Assistant Excise Commissioner as Gazetted Officer was requisitioned and brought the spot to witness his body search. Later, investigation was also conducted by him. The presence of PW5 having been procured to witness the body search despite a demand being made by the accused and conduct of investigation of the case by him undoubtedly is prejudicial to the accused.

30. Being an Officer superior to PW4, a report elaborately narrating the formalities of search, seizure and arrest was also forwarded to PW5 in compliance of Section 57 NDPS Act. The Apex Court has held in **State of Punjab Vs. Baldev Singh** [(1999) 6 SCC 172] that compliance of Section 57 NDPS Act is not mandatory but, directory. It was opined that partial compliance would suffice unless prejudice to accused is established. In the case on hand, the report received was marked in evidence as Ext.P17. It is found that Ext.P17 is only a photocopy of the report claimed to have been forwarded by PW4 to PW5 after holding the recovery of the contraband and



arrest of the accused. The Gazetted Officer, who had witnessed the search and the officer who conducted the investigation being one and the same, what happened to the original of the report received by him and why it was not procured and marked in evidence is not established. PW5 being the superior officer of PW4 who received Ext.P17 report and being the officer who conducted the investigation also, could have produced the original, if it was actually sent to him as claimed by PW4. It can be gathered therefrom that a report as contemplated under Section 57 NDPS Act was not forwarded to PW5 as claimed by PW4. For the sake of establishing that the formalities demanded by section 57 of the NDPS Act was complied with that a photocopy of the alleged report was produced and marked in evidence as Ext.P17. PW5 being the Gazetted Officer turned investigating officer, and the recipient of the copy of the report produced can only be taken as one manipulated to suit the requirement.

31. The independent witness who was examined as PW3 has also stated that the bars 4 in numbers were found wrapped in the bedsheet kept inside the bag carried by accused No.1 and bars, 3 in numbers, were kept inside one chamber of



the bag. Whereas the official witness deposed that a bedsheet was kept inside the bag and on removal of that, 4 bars were found inside one chamber of the bag and one bar in another chamber. PW4 has also stated that recovery of 4 bars was effected from the bedsheet found kept in the bag. Whereas according to PW1, PW3 and PW5 recovery was not effected from the bedsheet, but from the chamber of the bag. The above discrepancy undoubtedly is a material one and it creates suspicion about the prosecution case.

32. As per Section 52A NDPS Act, immediately on effecting the seizure of the contraband, an inventory shall be prepared by an officer empowered under Section 53 NDPS Act and forwarded to the Court having jurisdiction. On the inventory being furnished to the court alongwith the contraband articles seized from the accused, the Magistrate is bound to verify the contraband with the inventory and allow samples to be drawn, in his presence. In the case on hand, the properties seized from the bags carried by the accused alongwith other items have been forwarded to Judicial First Class Magistrate Court, Thrissur on 17.09.2018 itself. As revealed from the endorsement available on the list of



properties those were returned to PW4 with a direction to produce before the Court on the succeeding working day. Thus, the contraband was found produced later on 19.09.2018. PW5, the investigating officer failed to explain where the contraband has been kept after getting those returned from the Court. He has also not spoken the manner in which the contraband was kept in custody by PW5. There was a delay of two days for the production of contraband before the court after return of those. PW4 being the officer responsible for keeping the contraband in safe custody, he is bound to state where and in what manner the contraband were kept while in his custody. In the case on hand PW5 did not furnish a cogent explanation for the delay occurred and regarding the safe custody of the contraband. The detecting officer being an officer empowered under Section 53 NDPS Act is also bound to forward the contraband alongwith an inventory prepared in order to comply with the provisions of Section 52A NDPS Act. The sample of the contraband was drawn on production of the same before the court on 19.09.2018. But the inventory was prepared and produced before the court only on 24.09.2018. Therefore, requirements under Section 52A are also not complied with properly. The



delay of two days occurred for production of the contraband before the court was also not explained satisfactorily. Evidence is not forthcoming to establish that those were in safe custody. It was also pointed out by the learned counsel that the sample has been forwarded from the court to the Chemical Examiner's Laboratory on 07.11.2018. The receipt issued from the Chemical Examiner's Laboratory reveals that the samples of the contraband have been received by the Chemical Examiner's Laboratory on 09.11.2018. Smt.Durga, the Excise Officer who has taken the sample from the court and produced before the Chemical Examiner's Laboratory was not examined. Therefore, there is no evidence to establish where the sample was for two days prior to production of those before Chemical Laboratory. During examination in chief, PW5 has said that a statement of Smt.Durga was recorded and she was made a witness to the chargesheet but during cross examination, he deposed on the contrary that a statement of the witness was not recorded by him. However, the contraband was found received by the Chemical Examiner's Laboratory in sealed condition with seals intact and tallied with the sample seal impression provided. The delay occurred and non-examination of the officer concerned



will not be fatal to the prosecution.

33. The inventory prepared and forwarded to the court is marked in evidence as Ext.P13. In what form, the inventory must be forwarded to the court is provided under Section 52A NDPS Act. The inventory has to describe each and every aspect of the contraband Viz the nature, quality and quantity of the contraband in specific forms, whereas in Ext.P13, the total quantity of the contraband alone is stated. As per the list of properties, eight items of properties have been forwarded to the court. Those aspects were not found narrated in the inventory prepared by PW4 and forwarded to the court. In the case on hand, an inventory is devoid of the contents actually required to be described and it was found forwarded to the court belatedly. These are the legal flaws by which the prosecution case suffers.

34. In view of the above discussion, this Court is inclined to hold that the recovery of the contraband from the possession of the accused was not proved by the prosecution beyond reasonable doubt. Apart from the above, the Gazetted Officer who was procured to the spot to witness the search against denial of the accused to have one, himself conducted the investigation. The independent witness who had spoken



indifferently from the versions of the official witnesses would undoubtedly also create suspicion in the mind of this Court about the veracity of the prosecution allegations.

In the result, both appeals are allowed. Judgment of conviction and sentence of the accused are set aside. The bail bond of accused No.1 stands cancelled and he is set at liberty. Accused No.2 is already on bail. He is also set at liberty forthwith.

Sd/ -

MARY JOSEPH

JUDGE

JJ