

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Cril.Revision Petition No. 10 of 2021

1. The State of Manipur represented by the Chief Secretary (Home), Government of Manipur, Babupara Old Secretariat Building, Imphal West, Manipur-795001.
2. The Officer-in-Charge/Investigating Officer, Thoubal Police Station, Thoubal District, Manipur-795138.

..... Petitioner/s

- Versus -

1. Mohammad Hussain @ Thoiba, aged about 32 years, S/o Md. Zakir Hussain of Thoubal Wangkhem Muslim Mamang Leikai, P.O. & P.S. Yairipok, Thoubal District, Manipur.
2. Kyaw Kyaw Niang @ Abdul Jabar @ Ula Sin of Kawhmu Village, Moha Rangoon, Myanmar.
3. Md. Ayub Khan, aged about 41 years, S/o (L) Md. Azizur Rahaman of Yairipok Wangkhem Muslim Mamang Leikai, P.O. & P.S. Yairipok, Thoubal District, Manipur.
4. Md. Abdul Rajaque, aged about 35 years, S/o Abdul Rahim of Yairipok Tulihal near Aam Walli Masjid, P.O. & P.S. Yairipok, Thoubal District, Manipur.
5. Mr. Jhutan Malakar @ Jhuthan Malakar, aged about 29 years, S/o Mr. Shuamal Malakar of Kamalpur Village, P.O. anandpur, P.S. PR Bari (Purana Raj Bari), Belonia District, South Tripura.
6. Tanmoy Pal, aged about 22 years, S/o Tapan Kanti Pal of Krishnapur Village Ward No. 7 Dhupirbond GP. P.S. Dharmanagar, North Tripura.
7. Biman Das, aged about 38 years, S/o (L) Bimal Das @ Dimal Chandra Das of South Ramnagar Itkhalapoara near Mahindra Workshop, P.S. West Agartala, P.O. Agartala, West Tripura A/p

Gandhigram Kathaltali Village near Tripureswari Mandir English School, P.O. Gandhigram, P.S. Airport, West Tripura District.

8. Abdul Hashim, aged about 42 years, S/o Abu Tahar Nia of Rajnagar Village, P.O. Ramnagar, P.S. West Agartala, West Tripura District, A/p Bhadramishipara Village, P.O. NIT Agartala, P.S. Jirania, West Tripura District.
9. Saikh Muhamad Ahnsan, aged about 39 years, S/o MV Ahmed of Phoudel Mayai Leikai, P.O. Thoubal, P.S. Yairipok, Thoubal District, Manipur.

.....Respondent/s

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners	::	Mr. M. Devananda Addl. AG (Spl.PP) & Ms. N. Jotsna, Advocate.
For the Respondents	::	Mr. HS. Paonam, Sr. Adv. assisted by Ms. Lekhakumari, Adv; Mr. L. Shashibhusan, Sr. Adv. assisted by Ms. Kangungailui Kamei, Adv; Mr. H. Nabachandra, Adv.; Mr. S. Jhaljit, Adv.
Date of Hearing	::	17.04.2023/19.04.2023/06.02.2024/ 04.03.2024/03.04.2024/02.05.2024/ 06.05.2024/
Date of Judgment and Order	::	03.06.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mr. M. Devananda, learned Addl. A.G. assisted by Ms. Jyotsana, learned counsel for the petitioners/State; Mr. HS. Paonam, learned senior counsel assisted by Ms. Lekhakumari, Advocate; Mr. L.

Shashibhushan, learned senior counsel assisted by Ms. Kangungailui Kamei, Advocate; Mr. S. Jhalajit, learned counsel; and Mr. H. Nabakumar, learned counsel for the respondents/accused persons.

[2] Vide order dated 29.04.2024 in SLP(Crl.) No. 1536 of 2024 filed by the respondent/accused No.2 herein, the Hon'ble Supreme Court desired this Court to decide the revision petition filed by the State against the discharge order as expeditiously as possible and in any case, by the end of May, 2024. Accordingly, this case was listed on 30.05.2024 for pronouncement of judgment. However, due to sudden flash flood in Manipur, there were no court sittings on 30 & 31 May, 2024 and the case is again listed on 03.06.2024, the next working day available, for pronouncement of judgment.

[3] The present Revision Petition has been filed under Section 397 CrPC read with Section 36-B of the ND&PS Act, against the discharge order dated 20.01.2021 passed by the learned Special Judge (ND&PS) Thoubal in Spl. T. Case No. 12 of 2020 in connection with FIR No. 94(8) 2019 TBL Police Station under Sections 22(c)/29/60(3) ND&PS Act added Section 468 IPC and in the ex-parte interim prayed U/S 482 of the CrPC read with Section 36-B of the ND&PS Act for issuing a warrant directing the accused be arrested by any Sub-ordinate Court and lodge them to prison pending the disposal of the above referred revision petition. The respondent Nos. 1 to 9 are accused Nos. 1 to 9 before the court below. ***The point for determination in the present case is whether the ingredients for the***

offences punishable under Sections 22(c)/29/60(3) ND&PS Act and Section 468 IPC are made out against the accused persons or not.

[4] The brief facts of the case are that on 24.08.2019 at about 1:10 am, the Thoubal District Police with the assistance of the members of Phoudel Keirambi Youths Club, Phoudel Keirambi intercepted one Tata Di vehicle bearing Regd. No. MN06LA-2847 at IVR (Inter Village Road) of Phoudel Keirambi Mathak Leikai under the jurisdiction of Yairipok PS and the driver was identified as Mohammad Hussain (accused No. 1) and some suspected illegal items were recovered from the said vehicle, around 40,000 (forty thousand) Nos. of suspected WY tablets. The accused No. 1 was arrested by observing all the formalities. From the disclosure of the accused No. 1, one international drug smuggler, namely Mr. Kyaw Kyaw Naing @ Abdul Rahim (accused No. 2) was arrested from Imphal International Airport, Tulihal and recovered from him Indian Currency Rs. 60,000/- in cash, 15 Nos. of 100 denomination US Dollars, one 1000 Kyat, one 5000 kyat, one 100 kyat, one 20 kyat, one 20 taka, one passport being No. SMB110ED with Burma SIM card and one Samsung Duos being No. 6909503887, two pint out e-ticket, one boarding pass issued in the name of Niang Kyaw Yaw being Flight No. 6E 939, one Indian E-VISA being ID No. 1002v0851519.

[5] Again, from the disclosure of accused No. 1, one person namely Md. Ayub Khan (accused No. 3) was arrested from Yairipok Lamkhai on 24.08.2019 at about 1:40 pm and seized one Maruti 800 being Regd. No. DL2CAF-0821 and two mobile handsets, one Nokia being Mobile No. 9874512487 and one Redmi mobile phone handset being No. 9366342176.

Further, from the disclosure of accused No. 1, arrested one Md. Abdul Rajaque (accused No. 4) from Yairipok Lamkhai on 24.08.2019 at around 2:15 pm as he was also accomplice with accused No. 1 in the transport of narcotic substance. As such, a regular case was registered being FIR No. 94(8)2019 TBL PS U/s 22(c)/29/60(3) ND & PS Act.

[6] On 27.08.2019, seized one Saving Bank Account Pass Book being No. 86021011002909 in the name of accused No. 1 of Vijiya Bank, MG Avenue (Saikul) Branch from the rented house of accused No. 1 and one Biman Das (accused No. 7) had deposited money to the said bank account of accused No. 1 and on further checking of the passbook and deposit slip, accused No. 1 received a sum of Rs. 2,20,000/- on different dates from his business partner like Jhutan Malakar @ Jhuthan Malakar (accused No. 5) and Biman Das (accused No. 7). It is also stated that accused persons namely Jhutan Malakar (accused No. 5), Tanmoy Pal (accused No. 6) and Mohammed Hussain (accused No. 1) had checked in on 21.04.2019 and checked out on 22.04.2019 from PHOU-OI-BEE Hotel, North AOC Imphal East District along with Kyaw Kyaw Naing @ Md. Abdul Rahim (accused No. 2) as they were the same business partners. The accused persons were interrogated one after another and on interrogation of the accused persons, it revealed that the accused No. 2 hired accused No. 1's Tata DI to transport 30 rolls of carpet at the rate of Rs. 30,000/- only as a transport charge from Moreh to Silchar. On reaching Silchar, they met Abdul Hashim (accused No. 8) and handed over the carpets and fruits to him.

[7] On 03.09.2019, the accused persons namely accused Nos. 1, 2, 3 & 4 were produced before the Court and remanded them into judicial custody and on interrogation, it was disclosed that the accused Nos. 5, 6, 7 & 8 were also business partners of the other accused persons and involved in the same case. The accused Nos. 5 & 6 were arrested on 19.09.2019 from the house of accused No. 5 with the assistance of PR Bari Police Station, South Tripura. Thereafter, accused Nos. 5 & 6 were produced before the Court of Spl. Judge, Belonia, South Tripura on 20.09.2019. Further, the accused persons were produced before the Spl. Court (ND & PS), Thoubal and remanded into police custody till 03.10.2019. During the police custody, the arrested accused persons i.e. accused Nos. 5 & 6, were interrogated one after another. On interrogation of the accused persons, they admitted that they were the accomplice of the other accused persons. On further investigation of the accused persons, one Saikh Muhamed Ahnsan (accused No. 9) was arrested in connection with FIR No. 535 of Silchar P.S. dated 16.02.2020 U/s 120-B/489(B)/489(C) IPC and remanded into judicial custody by the Court of CJM, Cachar, Silchar on 21.02.2020. Thereafter, production warrant of the accused No. 9 was issued by the Spl. Court (ND & PS), Thoubal vide order dated 20.02.2020 and on 24.02.2020, he was released from Silchar Central Jail and on 26.02.2020, he was produced before the Spl. Court (ND & PS), Thoubal and remanded into police custody till 03.03.2020.

[8] Vide impugned the order dated 20.01.2021 passed by learned Special Judge (ND&PS), Thoubal in Spl.T. Case No.12 of 2020, the accused

persons (respondents herein) were discharged from the charges punishable under Sections 22(c)/29/60(3) ND&PS Act and Section 468 IPC. The grounds for discharging the accused persons are- (i) change of place of occurrence, and (ii) non-compliance of the mandatory provisions of Sections 41, 42 and 50 of ND&PS Act. The relevant para recording the reasons for the discharge are reproduced below:

“29. The changing/shifting of place of occurrence from IVR of Phoudel Kairembi Mathak Leikai to inside the campus of Thoubal PS suffers from illegalities which is not sustainable in the eyes of law. And I do not come across any provision of law about the changing of place of occurrence in the Chapters of Criminal Procedure Code as well as in the special Act of ND&PS Act and Rules. The place and time of occurrence is the backbone and from these, the investigation has to begin. In the instant case, the search, seizure and arrest were made without complying the provisions of Sec. 41(2), Sec. 42(1) and 50 of the ND&PS Act.

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32. In such serious case, it is very unfortunate on the part of the investigating team to discard and over looked the mandatory provisions of law laid down in Cr.P.C. and ND&PS Act, particularly the changing/shifting of place of occurrence as recorded in the FIR. The case has been charge sheeted through proper channel by the I.O. of the case through the O.C. Thoubal P.S., the SDPO-Thoubal, the Addl. SP(LO) Thoubal, the Superintendent of Police, Thoubal and the Addl. S.P.(P), Manipur and ultimately reached this Court.

33. Wadded through all the materials on record, the documents and the relevant case laws discussed above, it is made crystal clear that the seizing officer has violated the mandatory provisions of Sec. 42(1)(d) of the ND&PS Act and their non-compliance would render the investigation illegal. As per record, search, seizure and arrest were made by the complainant without giving/recording the grounds of his belief, so it is mandatory to invoke the proviso to Sec. 42(1) which is made in the case of State of Manipur vs. Beikhokim @ Veikhokin Kukini: 1996 (II) GLT 449 Full Bench that “the proviso to Sec. 42(1) if such officer has to carry search between sunset and sunrise, he must record the grounds of his belief.” As such, there are so many infirmities, loopholes and lacuna in the investigation of the case which leads failure to the prosecution case. Ld. Spl. PP cannot

convince the Court in the course of hearing that there occurs no lacuna in the legal formalities during investigation of the case such as changing/shifting of place of occurrence and drawal of rough sketch map of the premises of Thoubal Police Station.

34. Considering all these, I am of the opinion that there is no sufficient ground for proceeding against the accused persons.

Hence, all the accused persons are discharged from the liabilities of the case. Surety bonds (if any) stand cancelled and the security deposit (if any) be returned accordingly.”

[9] Being aggrieved by the impugned order of the Special Trial Court, the present Criminal Revision Petition has been filed mainly amongst the following grounds:

- (i) The Ld. Trial Court has misconstrued the facts of the present case and also the relevant provision of law by applying Section 42 (1) of ND&PS Act, without satisfying the two components of Section 42 of the ND&PS Act, 1985.
- (ii) The Ld. Trial Court has misinterpreted the judgment of the Hon'ble Supreme Court by misquoting the relevant provision of law.
- (iii) The Ld. Trial Court has failed to satisfy herself to the correctness, legality & propriety of the impugned order passed by herself.
- (iv) The accused No. 2 being the citizen of Myanmar has tried to leave the State of Manipur after the present impugned discharge order of the Ld. Trial Court. All the

accused persons in the present case has been trying to hamper the evidence and also try to leave the State of Manipur as no trial be done or completed against them..

- (v) The Ld. Trial Court has passed impugned order by misusing its inherent power by apparent obvious reasons.

[10] Mr. M. Devananda, learned Addl. AG was empowered as Special PP to conduct the present case on behalf of the prosecution vide order dated 28.04.2023 issued by the Deputy Secretary (Law), Government of Manipur under the provisions of Section 24(8) CrPC. Learned Spl. PP submits that the learned Special Court (ND&PS), Thoubal has committed manifest error in discharging the accused persons who were members of a syndicate of trans border racket dealing in illegal drug trafficking led by a foreign national. The syndicate operates over the areas extending from Myanmar to India (passing through Manipur, Assam, Nagaland & Tripura) to Bangladesh and is active for a long period. As disclosed during the course of investigation, it has been revealed that before the seizure and arrest made in the present case, many consignments were delivered through this route by the same syndicate. In the present case, the seizure is of 40,000 WY tablets concealed in 100 rolls of carpets and the said lot was transported from Moreh by a Bolero vehicle and transferred to the seized Tata DI vehicle at Yairipok Phoudel. It is pointed out that the only grounds cited for discharging the accused persons are – (i) for changing/shifting the place of

occurrence and (ii) non-compliance of the mandatory provisions of Sections 41, 42 and 50 of ND&PS Act, 1985.

[11] Mr. M. Devananda, learned Addl. AG submits that the assumption by the trial Court that the place of occurrence is at IVR of Phoudel Keirambi Mathak Leikai under the jurisdiction of Yairipok PS, has been made without any substance. Learned Addl. AG draws the attention of this Court to the provisions of Sections 177 and 178 CrPC which provide for place of trial and occurrence of an offence. He explains that as per Section 177 of CrPC for single offence, the place of trial shall be in a court within whose jurisdiction the offence was committed, such as place of murder or place of theft, etc. However, under Section 178 of CrPC for continuing offence and/or where the offence was partly committed in one place and partly in another place, any of the courts within whose jurisdiction the offence was partly committed, shall have jurisdiction to conduct the trial. It is highlighted that the offence of transportation of any psychotropic substances of commercial quantity punishable under Section 22(c) of ND&PS Act was initiated at Moreh where the 40,000 WY tablets were loaded in a Bolero pick-up vehicle and then transferred to the Tata DI goods vehicle bearing registration No. MN 06LA 2847 by A-1, A-3 & A-4 at Thoubal Wangkhem. The contrabands were detected by the locals when the vehicle broke down and subsequently transferred to Thoubal PS for safety and the seizure was made in the campus of Thoubal PS in presence of witnesses. It is submitted that the offence was initiated at Moreh (in Indian territory), continued at Thoubal Wangkhem (reloading from Bolero vehicle to Tata DI vehicle),

detected by the local villagers at IVR of PhoudeI and the seizure was made at Thoubal PS. Learned Addl. AG has pointed out that the offence was not completed and still was continuing and would be completed on successful transportation of the narcotic drugs to Bangladesh through Assam and Tripura. It is clarified that IVR at PhoudeI is not the only place of occurrence. Since it is a continuing offence, the campus of Thoubal PS can be treated as a place of occurrence within the ambit of Section 178 CrPC, as the seizure of the WY tablets was done there. It is submitted that the finding of the learned Special Judge with regard to shifting of place of occurrence is without any substance and it has failed to appreciate the provisions of Section 178 CrPC correctly.

[12] With regard to the second point of violation of mandatory provisions of Sections 41, 42 and 50 of ND&PS Act, it pointed out that the same is to be examined during trial on appreciation of evidence and materials relied by the prosecution. It is submitted that such factual aspects cannot be presumed at the stage of charge hearing. On merit also, Mr. M. Devananda, learned Addl. AG argues that the provisions of Sections 41 and 42 of ND&PS Act will not be applicable to the facts of the present case. It is pointed out that for application of Sections 41 & 42, there should be a prior knowledge or information of existence of contraband in any building, conveyance or closed place and prescribe procedures for entry and search of such place and make arrests and seizures therefrom. It is submitted that in the facts of the present case, the provision of Section 43 of the Act will be applicable where the seizure of contraband is from a public place or

conveyance on chance search without any prior information of such contraband. It is further reiterated that the provisions of Section 50 of the Act will not be applicable as the search and seizure was from vehicle and not from any person.

[13] Mr. M. Devananda, learned Addl. AG relies on the following case laws to fortify his argument:

(i) **Umar Abdul Sakoor Sorathia v. Intelligence Officer, Narcotic Control Bureau, (2000) 1 SCC 138:** Hon'ble Supreme Court held that while framing charge, the court is only to examine the materials produced by the prosecution on record and is not to examine minutely them.

(ii) **State of T.N. v. R. Soundirarasu, (2023) 6 SCC 768:** Hon'ble Supreme Court discussed the principles to be followed in framing of charge under Sections 239 and 240 of CrPC. It was held that at the stage of charge hearing, the only exercise to be taken is whether on consideration of the police report and documents filed by the prosecution, the allegations against the accused can be said groundless or not.

(iii) **Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC 657,** Hon'ble Supreme Court re-iterated the principles to be followed in charge hearing, ie, to examine whether the materials filed by the prosecution disclose the ingredients of the alleged offence or not.

(iv) **Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460:**

Hon'ble Supreme Court held that existence of materials constituting the offence is sine qua non for framing charge. It may be even weaker than a prima facie case. Existence of material constituting the offence is sufficient for framing charge. However, sufficiency of such materials for conviction is to be examined only in trial and not at the stage of charge hearing.

(v) **Krishna Kanwar v. State of Rajasthan, (2004) 2 SCC**

608: Hon'ble Supreme Court held that in case of search and seizure of vehicle found on random frisking, provisions of Section 43 of ND&PS Act will be applicable and Section 42 has no role as there is no prior information of the contraband.

(vi) **State of Haryana v. Jarnail Singh, (2004) 5 SCC 188:**

Hon'ble Supreme Court distinguished the difference between Sections 42 and 43 of ND&PS Act. It was held that Section 42 deals with the entry, search and seizure in any building, conveyance and closed space based on personal knowledge while Section 43 deals with chance seizure from public place without prior knowledge.

(vii) **Raju v. State of W.B., (2018) 9 SCC 708:** Hon'ble

Supreme Court explained the intricate difference between Sections 42 and 43 of ND&PS Act. Section 42 deals with entry, search, arrest and seizure made on prior information from a conveyance or closed place while Section 43 stipulates seizure of contrabands from public place including conveyance.

(viii) **Kallu Khan v. State of Rajasthan:** **MANU/SC/1221/2021: AIR 2022 SC 50:** Where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the ND&PS Act would apply.

(ix) **R. Maringchan Maring v. State of Manipur [Cri. Rev. P. No. 2 of 2017; Judgment dated 22.04.2024; Coram: Mr. Justice Siddharth Mridul, CJ, High Court of Manipur]:** **MANU/MN/0038/2024:** Relying on a catena of cases, this Court has observed that at the stage of framing of charge, the court is to examine whether there are sufficient materials to proceed against the accused and in case of 50:50 situation, charges are to be framed. Exercising the power under Section 397 CrPC of superintendence over courts under its jurisdiction, High Court can examine whether the proceeding of and/or the order on charge is perverse or not. Para 29 is reproduced for better understanding.

29. Considering the conspectus of the decisions discussed hereinabove, the following legal position emerges with regard to the law on charge; the revisional jurisdiction of the High Court; and the powers exercisable by the High Court in revisional jurisdiction whilst dealing with an order on charge:

(i) The jurisdiction of the Trial Court whilst exercising power under Section 397 of the CrPC is limited.

(ii) At the stage of charge, the Trial Court has to merely peruse the evidence in order to find out whether there is a sufficient ground for proceeding against the accused or not.

(iii) If upon consideration of the material placed before it, the Trial Court is satisfied that a prima facie case is made out against the

accused, it must proceed to frame charge in terms of Section 228 of the CrPC.

(iv) The Trial Court cannot conduct a roving and fishing inquiry into the evidence or a meticulous consideration thereof at this stage. Marshalling and appreciation of evidence, and going into the probative value of the material on record, is not in the domain of the Court at the time of framing of charges.

(v) In other words, at the beginning and the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged, and nor is any weight to be attached to the probable defence of the accused. Thus, a 'mini trial' is not to be conducted.

(vi) It is not obligatory for the Trial Court at the time of framing of charges, to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the CrPC.

(vii) Thus, it is axiomatic that at the initial stage if there is a strong/grave suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

(viii) The Trial Court may sift the evidence to determine whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence or not.

(ix) Detailed orders are not necessary whilst framing charges and contentious issues are not required to be answered by the Trial Court at the stage of framing of charges.

(x) Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused.

(xi) Further, if the scales of pan as to the guilt or innocence of the accused are something like even at the initial stage of making an order under Section 227 or Section 228, then, in such a situation, ordinarily and generally, the order which will have to be made will be one under Section 228 and not under Section 227 of the CrPC.

(xii) The provisions of section 397 of the CrPC empower the High Court with supervisory jurisdiction to consider the correctness,

legality or propriety of any finding, sentence or order and as to the regularity of the proceedings of any inferior court.

(xiii) Revisional jurisdiction is severely restricted, and ought not to be exercised in a routine and casual manner. It has to be exercised, normally, without dwelling at length upon the facts and appraising the evidence of the case.

(xiv) Further, the Court in revision ought to refrain from substituting its own conclusion on an elaborate consideration of evidence.

(xv) Whilst in revisional jurisdiction, the High Court cannot enter into the realm of appreciation of evidence at the stage of the framing of the charges itself.

(xvi) The High Court, under statutory obligation, ought to be loath in interfering at the stage of framing the charges against the accused, merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused person. Thus, self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face.

(xvii) Revisional powers could be exercised only when it is shown that, (a) there is a legal bar against the continuance of the criminal proceedings; (b) the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged; (c) where the exercise of revisional power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts.

(xviii) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

[14] In conclusion, learned Addl. AG emphasises that the provisions of Section 41, 42 and 50 of the ND&PS Act will not be applicable to the facts of the case in hand and the learned Special Judge (ND&PS), Thoubal was wrong in discharging the accused persons when the seizure of the contrabands from the accused persons at a public place, had been established and they were closely participating in the transportation of the contrabands. It is also submitted that applicability and non-compliance of the

mandatory provisions of Sections 41, 42 and 50 of the ND&PS Act are to be decided during the trial on appreciation of evidence produced by both the prosecution and the accused. There can be no presumption of such factual aspects. On the question of shifting of place of occurrence, it has been explained that the offence is a continuing one and it will culminate when the contrabands cross border to Bangladesh and as such the campus of Thoubal PS is also a place of occurrence and the trial Court was wrong in discharging the accused persons on this ground also. It is highlighted that in exercise of power conferred under Section 397 CrPC read with Section 36-B ND&PS Act, this Court can interfere with the impugned order of discharge, as the same is perverse on law as well on facts. It is prayed that the impugned order be set aside the accused persons be directed to face trial for the offences punishable under Sections 22(c)/29/60(3) ND&PS Act and Section 468 IPC.

[15] Mr. H. Nabachandra, learned counsel for respondent/accused No. 6 submits that there is no error in the impugned order discharging the accused persons, even not to speak of perversity. It is submitted that the place of occurrence was at IVR of Phoudel and without any basis, the same was shifted to the campus of Thoubal PS. There is an unexplained delay of 15 hours in registration of the FIR. It is also stated that the offence cannot be said to a continuing act, once the contrabands had been detected at Phoudel and hence no cause of action arose at the Thoubal PS. Reliance is placed on the decisions reported as **Golak Patel Volkart Ltd. V. Dundayya Gurushiddaiah Hiremath: (1991) 2 SCC 141** regarding the concept of continuing offence and **Rajinder Singh v. State: 1999 (1) Crimes 271**

(Delhi) regarding place of occurrence as the place where the offence was actually committed. It is prayed that the revision petition be dismissed being devoid of any merit.

[16] Mr. HS Paonam, learned senior counsel for the respondent/accused Nos.3 & 4 adopts the submission of Mr. H. Nabachandra, learned counsel for respondent No.6. He has further pointed out that no seizure has been made from them and the accusation against them is for facilitating in transport of narcotic substances. However, it is pointed out that except for the statement of the complainant, no other material is placed by the prosecution to connect respondent Nos.3 & 4 to the crime. It is submitted that these materials will not be sufficient for proceeding against the respondent/accused Nos. 3 & 4 and it is prayed that the revision petition be dismissed with cost.

[17] Mr. S. Jhaljit, learned counsel for the respondent/accused No.9 submits that his client was not arrested in connection with narcotic substance. The allegation against the respondent No.9 is for his involvement in manufacturing of a fake Aadhar card and he cannot be roped in a trial under ND&PS Act. No material is placed by the prosecution to link the respondent No.9 for the offence of conspiracy within the purview of Section 29 of ND&PS Act. Learned counsel relies on the decisions of (i) **Sajjan Kumar v. CBI, (2010) 9 SCC 368** for the principles of framing charge on existence of materials constituting the offence and (ii) **Sharif Ahmed and Ors. vs. State of Uttar Pradesh and Ors. (01.05.2024 - SC) : MANU/SC/0368/2024: 2024 INSC 363**, where Hon'ble Supreme Court held that there should be clarity in the charge sheet so as to enable the accused

to understand the accusations against him. It is submitted that the materials are not so clear with respect to the respondent/accused No.9 and it is prayed that the revision petition be dismissed with heavy cost.

[18] Mr. L. Shashibhushan, learned senior counsel for the respondent/accused No.2 submits that without any material, his client has been branded as main accused. It is pointed out that there was no seizure of contrabands from the possession of the respondent/accused No.2, except for some currency notes and mobile phones. It is stated that these materials are not sufficient to proceed against the respondent No.2 for the offences under Sections 22(c)/29/60(3) ND&PS Act and Section 468 IPC. The other accused are unknown to him. Further, it is reiterated that there is no material in the charge sheet to indicate that the seized contrabands belong to the respondent No.2.

[19] In addition to the grounds of shifting of place of occurrence and non-compliance of the mandatory provisions of Sections 41, 42 and 50 of ND&PS Act as held by the learned Special Judge, Mr. L. Shashibhushan, learned senior counsel for the respondent No.2 has also raised for the first time the new plea of non-compliance of the stipulation under Section 52A of ND&PS Act. It is explained that Section 52A(2) of ND&PS Act mandates a competent officer to prepare an inventory of the seized narcotic drugs with adequate particulars relevant to the identity of the seized drugs in any proceeding and produce before a Magistrate for the purpose of certifying the correctness of the inventory, taking relevant photographs in presence of the Magistrate and due certification of the drawing of the samples in presence of the Magistrate. Under sub-section (4), such inventory, the photographs of

narcotic substances and any list of samples drawn, will be primary evidence in respect of such offence. It is pointed out that in the present case there is a total non-compliance of the mandatory provisions of Section 52A of the ND&PS Act and as such the seized contrabands cannot be treated as primary evidence against the accused No.2 as well against other accused persons. Accordingly, the trial will be vitiated and the accused persons could have been discharged on this point also, even if the same was not considered during the charge hearing.

[20] Mr. L. Shashibhushan, learned senior counsel for the respondent/accused No.2 relies on the following decisions with regard to the provisions of Sections 41, 42, 43 and 52A of ND&PS Act:

- (i) **Yusuf vs. State (13.10.2023 - SC) :** **MANU/SC/1142/2023: AIR 2023 SC 5041**, Hon'ble Supreme Court held that non-compliance of the provisions of Section 52A of ND&PS Act would vitiate the trial and conviction. In that case, the sample was drawn in presence of the gazetted officer and not before the Magistrate as contemplated under Section 52A(2) of ND&PS Act.
- (ii) **Union of India v. Mohanlal, (2016) 3 SCC 379**, it is held that provisions of Section 52A of ND&PS Act is mandatory. Drawing of samples in presence of the Magistrate is mandatory.
- (iii) **Mohammed Khalid and Ors. vs. The State of Telangana (01.03.2024 - SC) : MANU/SC/0154/2024: 2024 INSC 158**, Hon'ble Supreme Court held that the provisions of Section 52A of ND&PS Act is mandatory and violation of such rule vitiates

the trial and hence the conviction. FSL report based on samples drawn in violation of the provisions of Section 52A of the Act will be a waste paper and cannot be read in evidence.

(iv) **Roy V.D. vs. State of Kerala (10.11.2000-SC): MANU/SC/ 0693/2000: AIR 2001 SC 137**, it is held that the provisions of Sections 41 and 42 of ND&PS Act are mandatory and their non-compliance will vitiate the trial.

(v) **Boota Singh v. State of Haryana, (2021) 19 SCC 606:** Difference between Sections 42 and 43 of ND&PS Act have been explained. It was held that a private vehicle will not come within the meaning of public place as mentioned in explanation to Section 43 of the Act.

[21] With respect to the principles to be followed in charge hearing, Mr. L. Shashibhushan, learned senior counsel refers to the following case laws:

(vi) **Vishnu Kumar Shukla and Ors. vs. The State of Uttar Pradesh and Ors. (28.11.2023 - SC) : MANU/SC/1268/2023: AIR 2024 SC 90**, Hon'ble Supreme Court held that a duty is cast on the courts to examine as to whether the documents and materials placed on record disclose an offence or not.

(vii) **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**, Hon'ble Supreme Court laid down the principles to followed while considering charge hearing as follows.

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(viii) **Sajjan Kumar v. CBI, (2010) 9 SCC 368**, Hon'ble

Supreme Court prescribed the essence in charge framing proceeding as follows:

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage,

there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

(ix) **Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547**, Hon'ble Supreme Court held that at the stage of framing of charge, the court can sift evidence in order to satisfy itself the materials are available for proceeding against the accused.

(x) **Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC 657**: Hon'ble Supreme Court observed that court can sift materials at the stage of charge hearing as to see existence of sufficient materials against the accused.

[22] In conclusion, Mr. L. Shashibhushan, learned senior counsel for the respondent/accused No.2 submits that the materials collected in violation of the mandatory provisions of Section 52A of the ND&PS Act for not producing the samples for certification before the Magistrate cannot be

a primary source of evidence against the accused persons during the trial and as such there are no valid materials to constitute the ingredients of the offences alleged against the accused. It is submitted that in a charge hearing proceeding, the court can examine whether there are valid materials against the accused for proceeding further in a full-fledged trial. It is reiterated that in view of the dictum of the Hon'ble Supreme Court in the cases cited above, there are no materials to constitute the offences under Sections 22(c)/29/60(3) ND&PS Act and Section 468 IPC. It is prayed that the revision petition may also be dismissed for non-compliance of the mandatory provisions of Section 52A of ND&PS Act.

[23] Mr. M. Devananda, learned Addl. AG replies to the new plea of violation of Section 52A of the Act raised by the accused No.2 that such plea cannot be raised for the first time in the revision petition, as the trial Court has not discussed the same. It is pointed out that revision petition is to be confined to the grounds and materials considered by the court below. In any case, it is stated that such plea of non-compliance of the mandatory statutory provision has to be examined during the trial.

[24] This Court has considered the materials on record including the whole LCR, the submissions made at bar including the new plea and relevant case laws. Before proceeding further, it will be fruitful to reproduce the relevant provisions from various statutes as below:

CODE OF CRIMINAL PROCEDURE, 1973 - (Central) :

Section 177 : Ordinary place of inquiry and trial.

Every offence shall ordinarily be inquired inland tried by a Court within whose local jurisdiction it was committed.

Section 178 : Place of inquiry or trial

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Section 227 : Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 228 : Framing of charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate 3[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 - (Central) :

Section 22 : Punishment for contravention in relation to psychotropic substances

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures,

possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 1[one year], or with fine which may extend to ten thousand rupees or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Section 29 : Punishment for abetment and criminal conspiracy

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

Section 36A : Offences triable by Special Courts

.....

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

.....

Section 60 : Liability of illicit drugs, substances, plants, articles and conveyances to confiscation

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance 2[or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances] which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2[or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

Section 41 : Power to issue warrant and authorisation

(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second-class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in

this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

Section 42 : Power of entry, search, seizure and arrest without warrant or authorisation

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any

document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

Section 43 : Power of seizure and arrest in public place

Any officer of any of the departments mentioned in section 42 may--

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.--For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

Section 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 Gazette 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 Gazette 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 Gazette 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 : 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 3[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 or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs

or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

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

(b) taking, in the presence of such Magistrate, photographs of 4[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 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under subsection (2) and certified by the Magistrate, as primary evidence in respect of such offence.

INDIAN PENAL CODE, 1860 - (Central)

Section 415 : Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation,--A dishonest concealment of facts is a deception within the meaning of this section.

Section 463 : Forgery

Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 468 : Forgery for purpose of cheating

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[25] From the above quoted provisions, it is clear that in case of single offence, the place of trial will be at the court within which jurisdiction, the alleged offence was committed as provided by Section 177 CrPC. In case of continuing offence and/or where part of the offence was committed at one place and another in another places, under the provision of Section 178 CrPC all the courts within whose jurisdiction the offence was partly committed will have jurisdiction. What is stipulated by Chapter XIII of CrPC (including Sections 177 and 178) is the jurisdiction of the court to conduct trial of the offence which was committed within its jurisdiction. This chapter refers to the jurisdiction of the court alone and does not mention about the jurisdiction of police station. Admittedly, in the present case IVR at Phoudei and the campus of Thoubal Police Station are within the jurisdiction of the Special Court (ND&PS), Thoubal which is having territorial jurisdiction over the revenue districts of Thoubal and Kakching. IVR at Phoudei and Thoubal PS are within Thoubal district and as such the Special Court (ND&PS), Thoubal has jurisdiction in view of Chapter XIII of CrPC. Further, the offence of possession and transportation of narcotic substance of commercial quantity is still a continuing offence. It started from Moreh border town in Manipur and the drugs were to travel through Assam and Tripura before reaching Bangladesh. This Court is of the opinion that the IVR at Phoudei cannot be stated as the only place of occurrence. Accordingly, it is held that the Special Court (ND&PS), Thoubal has committed manifest error in

concluding that the campus of Thoubal PS is not a place of occurrence. As already observed, the Special Court (ND&PS), Thoubal will have jurisdiction to try any offence committed within the territorial limits of Thoubal and Kakching revenue districts. The Special Court was wrong in discharging the accused persons on this ground.

[26] It is the settled principle of law that in case of charge proceeding, the court is only to examine the police report and the documents relied by the prosecution as to whether the ingredients of the offences are made out against the accused for proceeding further. The court cannot indulge into a roving inquiry to dissect whether such materials are sufficient for conviction or not. This is not in the realm of charge hearing. If necessary ingredients of the offence are established on perusal of the materials on record, the charge is to be framed. Sufficiency of materials is to be decided during trial on appreciation of evidence. [Kindly see **Amit Kapoor (supra)**]. Whether a mandatory provision of law or precedent has been complied or not is to be verified during trial on examination of the materials on record and the depositions of witnesses. The non-compliance of statutory mandate, if any, cannot be presumed by the court at the time of charge hearing. It is repeated as the sake of repetition that during charge hearing the court is to examine only as to whether the materials constituting the alleged offence are disclosed in the police report and the relied documents. In the present case, this Court is to examine whether the trial Court passed the discharge order within these limits set by the statutory provisions and the precedents of the Hon'ble Supreme Court as cited above.

[27] The second ground for discharge relied by the learned Special Judge (ND&PS), Thoubal is for non-compliance of the mandatory provisions of Sections 41, 42 and 50 of ND&PS Act. It is seen from the above cited judgments passed by the Hon'ble Supreme Court that for the applicability of Sections 41 and 42 of the Act, there should be a prior information or knowledge to the competent officers mentioned in the provisions about the possession and/or storage of narcotic substance in a conveyance, building or closed area. Such information or knowledge should be taken down in writing and should inform the higher officer before proceeding for search, seizure and arrest. These processes are mandatory in nature and any violation of such procedure will vitiate the trial. Section 50 deals with the situation where body search is conducted in public place in presence of gazetted officer. It is also the settled law that the person to be searched under Section 50 of the Act should be informed about his right to be searched in presence of a gazetted officer and this is a mandatory requirement. The provisions of Section 43 of ND&PS Act will be attracted in case of chance seizure of narcotic substance in transit or arrest in any public place. The expression 'public place' includes any public conveyance, hotel, shop or other place intended for use by or accessible to the public. As held in the case of **Kallu Khan (supra)**, Section 43 of the Act will be applicable where the search and seizure is made from the vehicle used by way of chance recovery from public place. Prior knowledge is not a mandatory requirement of Section 43, unlike Sections 41 and 42 of ND&PS Act.

[28] In the case in hand, there was no prior information or knowledge about the carrying of the contrabands in the seized vehicle. The contrabands were detected by the local people first and then by the police, when the vehicle carrying them broke down at the IVR of Phoudel. Situated such, the main ingredient for invoking the mandatory provisions of Sections 41 and 42 of the Act of having prior information about the carrying or storage of the contrabands seems to be missing. The contrabands were detected by the public and then by the police personnel of Thoubal PS by chance. If the vehicle did not break down at the IVR of Phoudel, the contrabands could not have been detected either by the local people or by the police. The present case seems to fall within the ambit of the provisions of Section 43 of ND&PS Act dealing with seizure on chance recovery. In the circumstances, this Court is of the firmed opinion that the provisions of Sections 41 and 42 of the Act may not be attracted and discharge on this ground is not warranted. The applicability and violation of such mandatory provisions have to be examined during the trial on minute appreciation of the materials on record and the depositions of the witnesses. In a charge hearing proceeding, the court ought not to have presumed the factual aspects which can be verified only during the trial. What is to be done is to see whether the ingredients constituting the alleged offences are made out from a bare reading of the police report and the documents relied by the prosecution. Sufficiency and admissibility of these documents are to be decided in the trial.

[29] The next and ultimate step is to examine whether there are materials produced by the prosecution for constituting the offences under

Sections 22(c)/29/60(3) of ND&PS Act and Section 468 IPC against the accused persons or not.

[30] Section 22(c) of ND&PS Act deals with manufacturing, possession, selling, purchase, transportation, import & export of illegal drugs in commercial quantity. In context of the present case, it is a case of possession and transportation of illegal drugs. The drugs were seized from the vehicle driven by the accused No.1. Section 29 of the Act explains the abetment of and conspiracy for committing any offence under the Act. From the statements of the witnesses and as disclosed during the investigation, the accused No.3 & 4 helped the accused No.1 in shifting the seized drugs from Bolero vehicle coming from Moreh to the Tata DI vehicle seized by the police. Accused No.2, the alleged kingpin of the syndicate of trans border drug trafficking, had closed connections with the other accused persons. Accused Nos. 1, 5, 6, & 2 were also part of the cartel and they stayed in Phou-Oi-Bee Hotel at Imphal from 21 to 22 April 2019 for preparation and transportation of the drugs. There were many monetary transactions amongst the accused persons as reflected in the bank statements filed by the prosecution. Accused No.2 used the mobile phone number of the accused No.9 for preparation of a fake Aadhar card for himself in the name of one fictitious person, namely Md. Abdul Manal of Thoubal Phoudel. As per the police report, there were three transportations of the narcotic drugs by this cartel prior to the present incident and all the accused persons had closely been coordinating among themselves for smooth transportation of the contrabands. Since the carrying of the narcotic substances in the seized

Tata DI vehicle was with the knowledge and participation of the accused No.1, the ingredients of Section 60(3) of the Act would also be attracted.

[31] This Court does not find any merit in the submission of Mr. S. Jhaljit, learned counsel for the respondent/accused No.9 that he could not be tried together with the other accused as his arrest was not related with ND&PS case and no narcotic substance was seized from him. From the police report, it is clear that accused No.9's mobile number was used to apply for a fake Aadhar card for the accused No.2 under a fictitious name. The ingredients of Section 468 IPC are present. In exercising the power conferred under Section 36-A(2) of the ND&PS Act read with Section 29 of the Act, the Special Court has jurisdiction to conduct trial against the accused No.9 for the offence under Section 468 IPC read with Section 29 ND&PS Act along with other co-accused.

[32] From the discussions made at para 30 & 31 above, it is evident that the ingredients for the offences under Sections 22(c)/29/60(3) of ND&PS Act and Section 468 IPC are made out against the accused persons who are respondents herein. The applicability of the mandatory provisions and admissibility of the materials relied by the prosecution are to be decided during the trial and such factual aspects cannot be presumed by the court in a charge hearing proceeding. Accordingly, the impugned order dated 20.01.2021 passed by the learned Special Judge (ND&PS), Thoubal in Spl. T. Case No. 12 of 2020 discharging the accused persons is hereby set aside with a direction to proceed with the trial, after framing charges under

Sections 22(c)/29/60(3) ND&PS Act and Section 468 IPC against the accused persons.

[33] It is made clear that this Court does not express any opinion on the merits of the case including the applicability of Sections 41, 42, 43, 50 & 52A of ND&PS Act, except for deciding the revision petition and the trial Court shall not be influenced by any of the observations made by this Court on these points.

[34] With these observations and directions, the revision petition is allowed and misc. applications, if any, are also disposed of accordingly. No cost.

[35] Send a copy of this judgment/order to the learned Special Judge (ND&PS), Thoubal for information and proceeding further as directed.

[36] Send another copy of this judgment/order to the Secretary General of the Hon'ble Supreme Court for placing the same in the file of SLP (Crl.) No. 1536 of 2024 for kind information.

JUDGE

FR/NFR

Kh. Joshua Maring