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Crl.A.No.421 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2025
PRONOUNCED ON : 12.01.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.421 of 2014

Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai-90.

... Appellant

Vs.

1.D.Maria Johnson @ Johnson

2.K.Vijaya Kumar

... Respondents

PRAYER: Criminal Appeal is filed under Section 377(2) of Code of Criminal Procedure, to set aside the judgment of acquittal for offence under Sections 8(c) r/w 21(c), 8(c) r/w 23, 8(c) r/w 28 and 8(c) r/w 29 of NDPS Act against A1 & A2 made in C.C.No.85/05 dated 25.10.2013 on the file of the Special Judge for EC Act Cases, Salem.

For Appellant : Mr.N.P.Kumar,
Special Public Prosecutor

For R1 : Mr.B.Mohan for Mr.T.Muruganantham

For R2 : Mr.R.Sankarasubbu



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JUDGMENT

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The appellant, Narcotic Control Bureau has preferred this Criminal Appeal challenging the judgment of acquittal dated 25.10.2013 rendered by the learned I Additional District & Sessions Judge, Special Court for E.C Act Cases, Salem (trial Court) in C.C.No.85 of 2005.

2.Gist of the case is as follows:

(i)The respondents 1 and 2 and absconding accused Pankaj Baijnath Bhargav @ Pankaj in conspiracy with one Fayaz of Sri Lanka indulged in drug trafficking between India and Sri Lanka by boat through Mannar Coast in Rameshwaran. The said Fayaz procured 12 kgs of heroin from the absconding accused Pankaj hailing from Mandsaur of State of Madhya Pradesh and arranged the respondents 1 and 2 to collect the drugs and smuggle the same to Sri Lanka by boat. As per their plan, on 15.08.2004, the respondents 1 and 2 left Chennai to Krishnagiri, stayed in Room No.207 of Geetha Lodge, Byrappa Street, Krishnagiri. They were informed that Pankaj, a tall man wearing specs and wheatish colour would deliver 12 kgs of heroin on 16.08.2004 between 10.00 hours and 12.00 hours.



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(ii)PW1/Intelligence Officer received this information, informed his

superior PW6/Superintendent giving details in Ex.P1. PW6 thereafter called NCB Officials namely PW1, PW2 & PW3 and directed them to take necessary action as discussed and proposed. Thereafter, PW1 along with NCB Team left Chennai in the official vehicle, reached Krishnagiri, made enquiry with V.Gnanamurthy/PW8 and R.Kubendran, Managers of Geetha Lodge, verified arrival register and requested both Managers of Geetha Lodge to be independent witnesses. On verification of the arrival register and enquiry, it was found that except Room No.207, other rooms occupied by regular guest and the Room No.207 booked in the name of one Tamilselvan and occupied by three persons. The NCB Team were keeping a watch. At about 11.00 hours, a person matching the description given by the Informant entered Geetha Lodge carrying a blue-grey colour rexin bag in his hand, enquired the staff of the lodge about Room No.207 and proceeded there, the NCB Team and independent witnesses followed him. After few minutes, the NCB Team knocked the door of Room No.207, the 1st respondent opened the door, at that time, three more persons inside the room including a person who carried blue-grey colour rexin bag. The NCB Team introduced themselves by showing identity card and enquired inmates of the room both in Tamil and Hindi. The person who carried blue-grey colour rexin bag was Pankaj Baijnath Bhargav



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@ Pankaj of Mandsaur, Madhya Pradesh and the other two persons are the 2nd

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respondent and one Senthilmurugan of Ramnad. Before conducting search, Section 50 of NDPS Act explained to them and also informed that one of the Member of the Team is a Gazetted Officer in the rank of Superintendent *i.e.*, PW6 and they were given option to be searched before Magistrate or a Gazetted Officer. The inmates in the Room No.207 declined and agreed to be searched in presence of PW6. When they enquired about the contraband, the respondents informed that they received 12 kgs of heroin from the absconding accused Pankaj and took out 10 packets from blue-grey colour rexin bag and handed over to PW1/Intelligence Officer. The packets cut opened using test kit, tested and found answering to heroin, thereafter, 10 packets weighed independently and found each packet were weighing between 1.070 kgs and 1.320 kgs. In total, all 10 packets weighed 12.840 kgs. Two samples from each packet taken, sealed, numbered, thereafter, the contraband tied and wax-sealed with NCB seal. On personal search with the 1st respondent, a Nokia Cellphone, two SIM cards and Indian Currency of Rs.2,255/- found and seized along with some incriminating documents. From the absconding accused Pankaj, some incriminating documents seized. From the 2nd respondent, a Panasonic Cellphone, SIM card, Indian Currency of Rs.5,130/- seized from him. All put in cover, properly sealed affixing NCB Seal.



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(iii)The independent witnesses, NCB Team, all four inmates of the

Room No.207 of Geetha Lodge all signed in the mahazar (Ex.P8). Thereafter, the summon under Section 67 of NDPS Act issued to the respondents, absconding accused Pankaj and Senthilmurugan directing them to appear at 04.30 p.m. on the same day. All appeared and gave statements. On the statement of absconding accused Pankaj, it was revealed that he brought 18 packets of heroin by concealing the same in Tata Safari Vehicle bearing Reg.No.RJ 14C 3C 2837, ten packets delivered to the respondents 1 and 2 in Geetha Lodge and remaining 8 packets were still available in the said vehicle parked near Arya Bhavan Hotel, Krishnagiri and one Manoj is the Driver, who was available. Thereafter, the vehicle found locked near Arya Bhavan Hotel, but the Driver Manoj not available. In presence of independent witness, the window glass broken, vehicle unlocked and from the vehicle, 7 packets weighing 1.300 kgs and one packet weighing 1.310 kgs, in total 10.410 kgs of heroin (8 packets) seized. Again samples taken, opened packets re-sealed, the vehicle, contraband all seized in presence of independent witnesses. During interrogation, of the four inmates in the Room No.207 of Geetha Lodge, Senthilmurugan found he had no knowledge about smuggling of contraband between the other inmates. Thereafter, Senthilmurugan was let-go, but the other three produced for remand before the Judicial Magistrate, Krishnagiri on



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17.08.2004. The accused remanded and the contraband and articles all

directed to be produced before the Special Court for E.C Act Cases, Salem on or before 23.08.2004. The properties and relevant documents all produced before the Special Court for E.C Act Cases, Salem on 20.08.2004. On completion of investigation, complaint filed before the Special Court for E.C Act Cases, Salem on 09.02.2005 against three persons viz., the respondents (A1 & A3) and Pankaj Baijnath Bhargav @ Pankaj (A2). Initially, the complaint was returned to rectify some defects, later, it was re-submitted on 17.05.2005, thereafter, the complaint was taken on file as C.C.No.85 of 2005. After coming out on bail, Pankaj (A2) absconded, hence, the case against him split up and numbered as C.C.No.34 of 2010 and the ranking of the respondents 1 and 2 re-arranged as A1 & A2 in the above. During trial, on the side of the prosecution, PW1 to PW8 examined and Exs.P1 to P79 marked and MO1 to MO61 produced. On the side of defence, DW1 to DW4 examined and Exs.D1 to D6 produced. On conclusion of trial, the trial Court dismissed the complaint acquitting the respondents 1 and 2, against which, the present Criminal Appeal is filed.

3.Learned Special Public Prosecutor appearing for the appellant/NCB submitted that the trial Court rendering a judgment of acquittal is contrary to



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law and against the evidence, documents and material objects produced. The trial Court failed to note that the charges framed against the respondents 1 and 2 is for offence under Sections 8(c) r/w 21(c), 23, 28 and 29 of NDPS Act which proved beyond all reasonable doubts. In this case, the respondents 1 and 2 gave voluntary statements admitting the conspiracy they had with the absconding accused Pankaj and Fayaz of Sri Lanka and both agreed to transport and smuggle the contraband from India to Sri Lanka by boat through Mannar Coast in Rameshwaram. The 1st respondent hails from Rameshwaram who has got good connection with the boat owners and made arrangement for easy passage and transportation of the contraband. The 2nd respondent hailing from Sivagangai District is a close associate of the 1st respondent.

4.He further submitted that the respondents found in Room No.207 of Geetha Lodge had no reason to be present on 16.08.2004 in Krishnagiri and they only waited for the absconding accused Pankaj to deliver the contraband as instructed by Fayaz, a Sri Lankan. Added to it, there was telephonic conversation between the respondents and other accused. In this case, PW8, Manager of Geetha Lodge confirmed that three persons stayed in Room No.207 and the room booked in the name of Tamilselvan and the absconding accused entered Room No.207 and four persons found inside the Room



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No.207 from where the contraband seized. Such huge quantity of heroin was seized from the Room No.207 of Geetha Lodge, following the confession of one of the accused, further recovery of 8 packets of heroin made from Tata Safari vehicle.

5.He further submitted that absconding accused Pankaj hails from Mandsaur, Madhya Pradesh where the availability of heroin is likely. In this case, PW2 and PW5 met the Manager of Geetha Lodge and informed the search, till such time PW3 waited there is not a contradiction and all the three are Intelligence Officers of NCB. The trial Court failed to consider that all the witnesses stated that the respondents herein handed over the bag, in which ten packets of heroin found and there is no contradiction in the evidence of witnesses. In this case, PW2, PW3 & PW5 clearly deposed that they participated in mahazar proceedings, explained Section 50 to the respondents and affixed their signatures at the end of the mahazar (Ex.P4). During the cross examination, PW2, PW3 & PW5 deposed with regard to mahazar proceedings without any contradictions. PW8 treated hostile since there was variation in the time given by him with regard to search and seizure. In all other aspects, PW8 not contradicted his earlier statement. The presence of the respondents in Room No.207 of Geetha Lodge is not seriously disputed. The



trial Court failed to consider that the evidence of PW1/Intelligence Officer and

PW6, his Superior Officer confirmed the receipt of prior information (Ex.P1),

recording the same, compliance of Section 42, compliance of Section 50

before the search, thereafter, PW1 submitting the report under Section 57, all

statutory conditions followed in this case, in the presence of PW6 conducting

search and seizing contraband. The only variation in the evidence of PW1 and

PW6 is that as per PW1, the respondents 1 and 2 jointly picked up blue-grey

colour rexin bag and handed over ten packets of contraband. On the other

hand, the evidence of PW6 is that the respondents 1 and 2 produced the bag

and it was PW1 who opened the bag and took out 10 packets. In any event, it

is certain that the contraband seized from the blue-grey colour rexin bag. This

minor contradiction blown out of proportion and projected that there are

contradictions in the recovery of the contraband. Likewise the finding of the

Trial Court that Section 50 not complied with, is not proper. In the mahazar

(Ex.P4), the compliance of Section 50 is specifically recorded, further, the

official witnesses PW1, PW2, PW3, PW5, respondents 1 and 2, absconding

accused Pankaj, PW8/Manager of Geetha Lodge and other witnesses signed

the same. In this case, Section 57 report submitted to the superior within the

stipulated time. Yet another ground the trial Court relied upon is that the

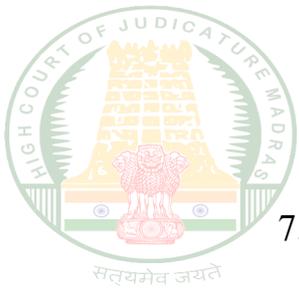
issuance of summons under Section 67 of NDPS Act and recording of



statements of the respondents.

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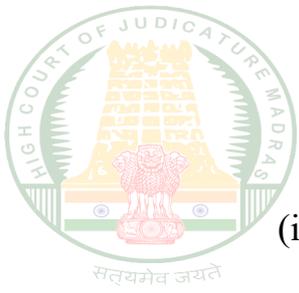
6.He further submitted that the trial Court had given undue weightage to the evidence of PW2, PW3 & PW5 in not mentioning arrival of absconding accused Pankaj to Geetha Lodge at 11.00 a.m., but these witnesses signed in the mahazar (Ex.P4). The other ground is that the size of Room No.207 is 10 X 10 sq.ft, where PW1, PW2, PW3, PW5 & PW6, two independent witnesses, four inmates all inside the room from 11.00 a.m. onwards and it is impossible for 14 persons to be inside the room till the completion of entire proceedings. Further, 67 notices issued to the inmates of the Room No.207 namely the respondents 1 and 2, absconding accused Pankaj and Senthilmurugan directing them to appear before the Intelligence Officer at 04.30 p.m. again, it is within the same room. As per the evidence of PW8, two other local Police personnel summoned and present to aid NCB officials. Hence, the respondents, absconding accused Pankaj all were in custody right from the morning at 11.00 a.m. till they were shown arrest. During this custody period, 67 statement obtained which cannot be stated to be voluntary statement. The Trial Court disbelieving 67 statement, dismissing the complaint, acquitting the respondents is not proper.



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7.He fairly submitted that *Tofan Singh v. State of Tamil Nadu* reported in **(2021) 4 SCC 1** referred to Larger Bench by the Hon'ble Apex Court and held that 67 statement cannot be taken as admission and it can be utmost used only to the limited purpose to prove recovery and it is akin to Section 27 of Indian Evidence Act, 1872. In this case, apart from 67 statement, there are other compelling materials connecting the respondents and absconding accused Pankaj to the crime. The seized contraband is heroin, which is of huge quantity. In this case, PW1, PW2, PW3, PW5 and PW6 are the officials of the Narcotic Department who clearly deposed of getting prior information, formation of a Team, visiting Krishnagiri, keeping surveillance of Geetha Lodge, in presence of PW8/Manager and R.Kubendran found the absconded accused entering lodge with blue-grey colour rexin bag, enquiring Room No.207, immediately NCB Team and independent witnesses knocked the door of Room No.207, 1st respondent opened the door, 2nd respondent, absconding accused and Senthilmurugan were inside the room, contraband seized, recorded the same in the mahazar (Ex.P4), all statutory procedures namely Sections 42, 50 & 57 complied with.

8.In support of his submissions, the learned Special Public Prosecutor relied on the following decisions:



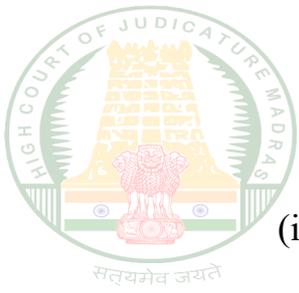
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(i) He placed reliance on the decision of the Hon'ble Apex Court in

Pattu Lal v. State of Punjab reported in ***(1996) 8 SCC 228*** for the point that the evidentiary value of a deposition which is otherwise admissible is not just wiped out in the absence of corroboration. It will be unfortunate if on account of overemphasis for corroboration, a crime goes unpunished by not giving due weight to uncorroborated evidence when such evidence is otherwise reliable.

(ii) Further placed reliance on the decision of the Hon'ble Apex Court in ***Dharampal Singh v. State of Punjab*** reported in ***(2010) 9 SCC 608*** for the point that the case of the prosecution cannot be rejected only on the ground that independent witnesses have not been examined, in case of appraisal of the evidence on record the Court finds the case of prosecution to be trustworthy.

(iii) Further placed reliance on the decision of the Hon'ble Apex Court in ***Vijaysinh Chandubha Jadeja v. State of Gujarat*** reported in ***(2011) 1 SCC 609*** for the point that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him.



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(iv) Further placed reliance on the decision of the Hon'ble Apex Court in the case of ***Baldev Singh v. State of Haryana*** reported in ***(2015) 12 Scale 308*** for the point that once the physical possession of the contraband by the accused has been proved, Section 35 of the NDPS Act comes into play and the burden shifts on the accused to prove that he was not in conscious possession of the contraband.

(v) Further placed reliance on the decision of the Hon'ble Apex Court in ***Varinder Kumar v. State of Himachal Pradesh*** reported in ***(2020) 3 SCC 321*** for the point that Sections 52 & 57 of NDPS Act is directory in nature.

(vi) Further placed reliance on the decision of the Hon'ble Apex Court in the case of ***State of Punjab v. Baljinder Singh & Anr.***, reported in ***(2019) 10 SCC 473*** for the point that the requirement under Section 50 of the Act is concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

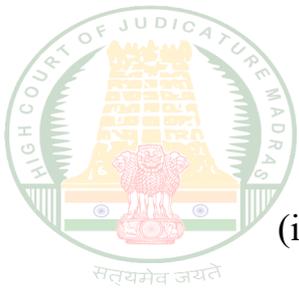
(vii) Placed reliance on the decision of the Hon'ble Apex Court in ***Sushil Kumar Tiwari v. Hare Ram Sah and others*** reported in ***(2025) 0 INSC 1061***



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for the point that the underlying foundation of the principle of beyond reasonable doubt is that no innocent should face punishment for a crime that he has not done. But a flipside of the same, of which we are conscious is that at times, owing to a misapplication of this principle, actual culprits manage to find their way out of clutches of law. Such misapplication of this principle, resulting into culprits walking free by taking benefit of doubt, is equally dangerous for the society. Every instance of acquittal of an actual culprit revolt against the sense of security of the society and acts as a blot on the criminal justice system. Therefore, not only should no innocent face punishment for something that he has not done, but equally, no culprit should manage an acquittal on the basis of the unreasonable doubts and misapplication of procedure.

(viii)Placed reliance on the decision of the Hon'ble Apex Court in ***Rajwant Singh v. The State of Haryana*** reported in ***(2025) 0 Supreme (SC) 135*** for the point that non-compliance of Section 52A on a preponderance of probabilities, either by leading evidence of its own or by relying upon the evidence of the prosecution, must be asserted in the evidence.



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(ix)Placed reliance on the decision of the Hon'ble Apex Court in

Y.S.Nataraja v. State of Karnataka reported in ***(2025) 0 Supreme (SC) 1374***

for the point that the suggestions made to the witness by the defence counsel and the reply to to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused.

9.Making the above submissions and relying upon the decisions, the learned Special Public Prosecutor prayed that the judgment of the trial Court to be aside aside and the appeal to be allowed.

10.Learned counsel for the 1st respondent submitted that in this case, the mandatory provisions of Sections 42, 50 and 57 of NDPS Act not complied with and Section 67 of NDPS Act misused. The case of the prosecution is that on 15.08.2004, information received by PW1/Intelligence Officer through the Office Phone. On 15.08.2004 on an Independence Day, no such information could have been received on that day as projected in Ex.P1. PW6/Superintendent of NCB received information (Ex.P1) as per Section 42 and directed PW1, PW2 and PW3, a team of NCB Officials to take necessary action. The origination of Ex.P1 itself is doubtful. He further submitted that



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in this case, in Ex.P1, the names of Fayaz of Sri Lanka, absconding accused

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Pankaj of Mandsaur, Madhya Pradesh and the names of the respondents were given and details about delivery of contraband with time and place. PW1, PW2, PW3, PW5, PW6 and other NCB officials proceeded in the official vehicle of NCB, left Chennai, reached Krishnagiri and kept a watch from 08.00 a.m. near Geetha Lodge. It is recorded in 57 report (Ex.P10) that the NCB Team after reaching Geetha Lodge, enquired the Managers namely PW8 and R.Kubendran of Geetha Lodge about the occupant of Room No.207. How the Room No.207 had been fixed, there is no material. Though the prosecution attempted to give explanation stating that the Managers of Geetha Lodge informed that the other Occupants are regular persons except the occupant in Room No.207, there is no evidence or material to substantiate the same. On perusal of Ex.P9/Geetha Lodge Register Extract, it is seen that on 15.08.2004 and 16.08.2004, several persons checked in Geetha Lodge, none of them stayed more than a day, hence, it cannot be stated the other occupants are regular long occupants.

11.He further submitted that at about 11.00 a.m. the NCB Team along with two independent witnesses namely Managers of Geetha Lodge viz., PW8 and R.Kubendran were keeping a watch, at that time, a person matching with



description in Ex.P1 found carrying a blue-grey colour rexin bag in his hand, the NCB team and independent witnesses followed him, knocked the door of Room No.207, the 1st respondent opened the room and there were three other Occupants namely the 2nd respondent, absconding accused Pankaj and Senthilmurugan, who is neither a witness nor an accused in this case. The NCB Team disclosed their identity, enquired the Occupants of the room, at that time, the respondents 1 and 2 produced 10 packets containing heroin from the rexin bag. On the contrary, PW6's evidence is that the respondents herein produced the rexin bag from under the cot. This vital contradiction in production of contraband rightly considered by the trial Court. The prosecution attempted to gloss over the same, which is discussed by the trial Court considering the other evidence namely PW2, PW3 & PW5/Intelligence Officers of NCB. All the three witnesses not whispered anything with regard to respondents producing the contraband in this case. These three Intelligence Officers except signing the mahazar (Ex.P4) and serving 67 summon to respondents and others in this case, they do not speak anything about search, seizure and recovery of contraband and compliance of Section 50. The other independent witnesses are PW8 and R.Kubendran, Managers of Geetha Lodge. In this case, PW8 not supported the case of the prosecution, treated hostile and R.Kubendran not examined as witness. The version of PW8 is that NCB



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officials came to Geetha lodge, booked Room No.207, recorded in

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Ex.P9/Register in the name of one Tamilselvan as though he is the Occupant of the room and the NCB Team came to the lodge at about 02.30 p.m., and along with them they brought the respondents herein and no search, seizure and recovery conducted in Room No.207, further two local Policemen came with NCB officials and the entire case projected by the appellant is stage mannered. The prosecution not seriously disputed the evidence of PW8 and not thought fit to examine other witness to the mahazar (Ex.P4). PW8 disclosed that Uniformed Local Police personnels accompanied the NCB team. Further, the mahazar (Ex.P4) is projected as Section 50 of NDPS Act compliance report. A reading of Ex.P4 would show that narrations starts as though it is independent witness records the happenings inside the Room No.207 but in the end it is signed by PW1. Of course, there are attestation by other witnesses. On going through Ex.P4, it can be said that it is in total violation of mandatory condition before search.

12.He further submitted that the trial Court rightly found the prosecution miserably failed to prove the basic facts in this case, thereafter only statutory presumptions come into play. In this case, the compliance of Section 67 is nothing but a mockery. According to the prosecution, from morning 11.00



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a.m. to 04.00 p.m. the search conducted in Room No.207 as per Ex.P4. On the same day, 67 summon served to the respondents directing them to appear before the Intelligence Officer at 04.30 p.m. This is again in the same Room No.207, thereafter arrest is at 11.00 p.m again in the same Room No.207. Thus, the entire sequence is a cooked up story to falsely implicate the respondents. Further, the trial Court finding that Room No.207 is 10 X 10 sq.ft., which is admitted by PW1 and there is no possibility of 13 to 14 persons stay inside the room, hence, the proceedings recorded in Exs.P4, P13, P15 and other documents is highly improbable.

13.He further submitted that the respondents examined DW1 to DW4. DW1 is the father of the 1st respondent who deposed about illegal detention and obtaining signature in blank paper. DW2, a Receptionist-cum-Accountant in Hema Lodge states about procedures followed before entertaining a Guest and permitting them to stay in the lodge, writing of Guest Admission Register after receiving identity proof, receipt of advance amount and other details. DW3 is the Court Staff who confirms receipt of retraction letter of the respondents from Salem Central Prison. DW4, Manager of Hotel Comfort corroborates the procedure and evidence of DW1. He further submitted that after acquittal, the respondents enjoyed double presumption of innocence,



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hence, the acquittal of the respondents cannot be disturbed only for the reason that the prosecution has got another version to their story. The Trial Court rightly relied on the decision of the Hon'ble Apex Court in ***Tofan Singh v. State of Tamil Nadu*** reported in ***(2021) 4 SCC 1*** case and found that the statement given under Section 67 cannot be taken in evidence except for the limited purpose of recovery. But in this case even before 67 statement, recovery made, hence, 67 statement projected against the respondents cannot be considered in evidence.

14. In support of his submissions, learned counsel for the 1st respondent relied on the following decisions:

(i) ***Boomi @ Boominathan v. State represented by The Inspector of Police, C-5, Karimedu Police Station, Madurai District in Crl.A(MD)No.39 of 2017*** for the point that as per Section 50, the right of the accused has to be intimated even before the search.

(ii) ***S.Emperumal v. Intelligence Officer, NCB, South Zone Unit, Chennai*** reported in ***2009 (3) MWN (Cr.) 407*** for the point that failure to intimate the arrest of the accused to the family members or any of the friends of the accused would amount to violation of Article 22(5) of Constitution of



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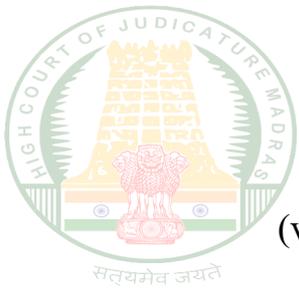
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(iii) ***Karnam Thakka Babu v. State rep. By Inspector of Police, Chennai*** reported in ***CDJ 2013 MHC 2092*** for the point that the effect of non-compliance of Section 50, the accused is entitled for acquittal.

(iv) ***Noor Aga v. State of Punjab & Another*** reported in ***CDJ 2008 SC 1168*** for the point that if a person in custody is subjected to interrogation, he must be informed in clear and unequivocal terms as to his right to silence.

(v) ***State of Rajasthan v. Parmanand & Another*** reported in ***CDJ 2014 SC 161*** for the point that the idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer and there is no other third option.

(vi) ***U.O.I v. Bal Mukund & Others*** reported in ***CDJ 2009 SC 698*** for the point that the appellate court would not interfere with a judgment of acquittal only because another view is possible. On the other hand, if two views are possible, it is trite, the appellate court shall not interfere.



(vii) *Mohinder Singh v. The State of Punjab* reported in (2018) 18 SCC

540 had held that in an appeal against acquittal, the High Court will not interfere unless there are substantial and compelling reasons to reverse the order of acquittal. The Hon'ble Apex Court in paragraph No.15 summarized the general principles regarding the powers of the appellate Court while dealing with an appeal against the order of acquittal, which is as follows:

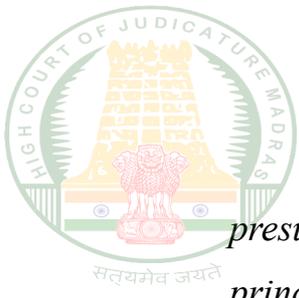
“42.From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the



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presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

(viii) *Paulmeli & Another v. State of Tamil Nadu Tr.Insp. of Police* reported in ***CDJ 2014 SC 476*** for the point that the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

15. Making the above submissions and relying upon the decision, the learned counsel for the 1st respondent prayed for dismissal of the appeal and to confirm the judgment of acquittal.

16. Learned counsel for the 2nd respondent concurred with the submissions of the 1st respondent and further submitted that in this case, the 2nd respondent hails from Sivagangai District and has got no acquittance or any



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relationship with any person in the sea coast of Rameshwaram, more particularly, the 1st respondent. The case projected by the prosecution is that

one Fayaz of Sri Lanka purchased contraband from the absconding accused Pankaj and this contraband was to be smuggled and transported from India to Sri Lanka by boat through Mannar Coast, Rameshwaram. The appellant had not taken steps to find who is Fayaz as well as to secure the absconding accused Pankaj. The 2nd respondent falsely implicated in this case which is clearly exposed by the evidence of PW8, Manager of Geetha Lodge. In this case, the NCB Team are PW1, PW2, PW3, PW5 & PW6, of which PW1, PW2, PW3 and PW5 are Intelligence Officers and PW6 is the Superintendent, a Superior Officer to these officers. In this case, the mandatory provisions of Sections 42, 50 & 57 not followed and Section 67 statement misused. Ex.P4 is projected as compliance to Section 50 and on reading of Ex.P4, it would clearly show that the Investigating Officer had not put the respondents to notice about the statutory safeguard as per Section 50. Ex.P4 is a mahazar in which there is a passing reference to Section 50, nothing more. This Court as well as Hon'ble Apex Court in plethora of cases held that Section 50 notice cannot be in an omnibus form it has to be informed to each of the persons who intended to be searched. In this case, admittedly in Room No.207 apart from the 2nd respondent, there were three more persons namely the 1st respondent,



absconding accused Pankaj and Senthilkumar. Hence, there is a clear violation

of Section 50.

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17.He further submitted that Section 57 report confirms the violation committed. As earlier submitted right from the morning 11.00 a.m. on 16.08.2004, till the time of remand on 17.08.2004 the respondents were under the forcible detention and custody of the appellant, thereafter, the respondents were shown arrest at 11.00 p.m. on 16.08.2004 and the search was between 11.00 a.m. to 04.00 p.m. In such circumstances, serving 67 notice directing them to appear at 04.30 p.m. and thereafter recording statement projecting as voluntary disclosure would not arise.

18.He further submitted that the Hon'ble Apex Court in the case of **Tofan Singh** (cited supra) clearly held that 67 statement is akin to Section 27 of Indian Evidence Act. At best it can be used for the purpose of any recovery, in this case, admittedly Ex.P4 confirms the recovery was much earlier to the statement. There are contradictions in the evidence of PW1, PW2, PW3, PW5 & PW6 who does not speak about any recovery. PW4 and PW7 are the Chemical Analyst and PW8 is the Hotel Manager who had not supported the case of the prosecution. Further, PW8 had cut the root and foundational fact of



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the prosecution case deposing that NCB Team along with the respondents and two local Policemen entered Geetha Lodge, forcibly occupied Room No.207, thereafter, stage mannered the entire search, seizure and recovery. Considering all these aspects, the trial Court rightly acquitted the respondent and dismissed the complaint.

19. In support of his submissions, learned counsel for the 2nd respondent relied on the following decisions:

(i) He placed reliance on the decision in the case of *State of Bihar v. Ramdaras Ahir and Ors.*, reported in *1985 Crl.L.J 584* for the point that the accused in this case arrested on 16.08.2004, thereafter, they remanded to prison, faced trial and after prolonged incarceration as under trial, finally on 25.10.2013 acquitted of all charges. For almost nine years, they were in prison. The appeal against acquittal filed in the year 2014 and the appeal has been taken now in the year 2025, hence, there is a long delay. Thus, the constitutional right to speedy trial by a fair, just and reasonable procedure guaranteed by Article 21 of Constitution is violated.

(ii) He placed reliance on the decision of *Chandrappa & Ors v. State of Karnataka* reported in *(2007) 4 SCC 415* for the point that in case of acquittal,



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the appellate Court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(iii)Placed reliance on the decision of this Court in the case of ***State Rep. by the Public Prosecutor, High Court, Madras [K-6 T.P.Chatram P.S., Chennai Crime No.139 of 2014] in Crl.A.No.506 of 2016 dated 08.12.2023*** wherein this Court relied on the decision of the Hon'ble Apex Court in ***Union of India v. Mohanlal and Another*** reported in ***MANU/SC/0073/2016*** had held that drawing of samples at the time of seizure should be in accordance with law as per Section 52-A of NDPS Act and it has to be done in the presence of Magistrate who has to certify the correctness of the list of samples so drawn.

(iv)In the case of ***Bothilal v. The Intelligence Officer, Narcotics Control Bureau*** reported in ***AIROnline 2023 SC 339***, the Hon'ble Apex Court reiterated the principles of ***Tofan Singh*** and ***Mohanlal*** cases.



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(v) In the cases of *Firdoskhan Khurshidkhan v. The State of Gujarat &*

Anr. reported in **2024 SCC OnLine SC 660** and *Ajay Kumar Gupta v. Union of India* reported in **2024 SCC OnLine SC 2140** and *Intelligence Officer, NCB, RIU, Trivandrum v. Sulfikar @ Aliyas Sulfi in Crl.A.No.733 of 2006, dated 01.04.2025*, the principles of *Tofan Singh* case had been reiterated.

(vi) In the case of *State of Himachal Pradesh v. Rakesh Singh* reported in **MANU/HP/0245/2025** the High Court of Himachal Pradesh in paragraph No.17 following the decision of the Hon'ble Apex Court in *Arif Khan @ Agha Khan v. State of Uttarakhand* reported in **(2018) 18 SCC 380** had held as follows:

“17. In the case of Arif Khan @ Agha Khan Vs. State of Uttarakhand ((2018) 18 SCC (380), Hon'ble Supreme Court has held that it is mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. Further that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. Para Nos.18 to 20 of the aforesaid judgment read as follows:



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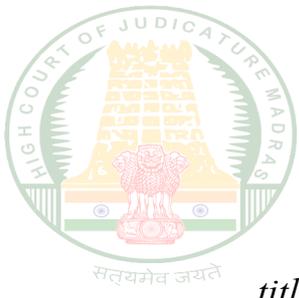
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“18. What is the true scope and object of Section 50 of the NDPS Act, what are the duties, obligation and the powers conferred on the authorities under Section 50 and whether the compliance of requirements of Section 50 are mandatory or directory, remains no more res integra and are now settled by the two decisions of the Constitution Bench of this Court in State of Punjab vs. Baldev Singh (1999) 6 SCC 172 and Vijaysinh Chandubha Jadeja (supra).

19. Indeed, the latter Constitution Bench decision rendered in the case of Vijaysinh Chandubha Jadeja (supra) has settled the aforementioned questions after taking into considerations all previous case law on the subject.

20. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. (See also Ashok Kumar Sharma vs. State of Rajasthan, 2013 (2) SCC 67 and Narcotics Control Bureau vs. Sukh Dev Raj Sodhi, 2011 (6) SCC 392).”

(vii) In paragraph No.18 following the decision of Hon'ble Apex Court in the case of **Ranjan Kumar Chadha v. State of Himachal Pradesh** reported in **AIR 2023 SC 5164** held as follows:



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“18. In a recent judgment of the Hon’ble Supreme Court, titled as Ranjan Kumar Chadha vs. State of Himachal Pradesh, AIR 2023 Supreme Court 5164, Hon’ble Supreme Court has extensively addressed the scope and object of Section 50 of NDPS Act and laid down the guidelines by holding that search and seizure and recovery of contraband not made in the presence of any Magistrate or Gazetted Officer and non-compliance with the mandatory procedure under Section 50 of NDPS Act, 1985 is fatal to the prosecution case. It has been held as under:

“33. Ordinarily, it could be said or argued that “to search any person” would mean, to search the articles on the person or body of the person to be searched and would normally not include the articles which are not on the body of the person to be searched. When we are deliberating on the scope and true purport of Section 50 of the NDPS Act, we should bear in mind that the main object of Section 50 of the NDPS Act is to avoid the allegation of planting something or fabricating evidence by the prosecution or the authorized officer.

..... ..
36. Considering the aforesaid provisions, the inference which can be drawn is that “to search any person” would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would be the one prescribed under Section 50 of the NDPS Act. In contrast, if search of any building, conveyance or place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under Section 50. However, when a suspected or arrested person is to be searched, then the procedure prescribed under Section 50 comes into operation and the procedure thereunder is required to be followed. This can be seen by referring to Section 100(3) of the CrPC 1973 which provides that where any person is reasonably



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suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. The concealment which is suspected is on the person or about his person.

64.From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:-

(i)Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

(ii)Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii)Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv)While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.

(v)In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.

(vi)Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him



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before the nearest Magistrate.

(vii)Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii)Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix)The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x)Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”

20.Making the above submissions and relying upon the decision, the learned counsel for the 2nd respondent prayed for dismissal of the appeal and to confirm the judgment of acquittal.

21.This Court considered the rival submissions and perused the materials available on record.

22.In this case, PW1/Intelligence Officer of NCB received information on 15.08.2004 at 06.00 p.m. that one Fayaz, a Sri Lankan indulged in drug



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trafficking between India and Sri Lanka by boat through Mannar Coast of

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Rameshwaram. The said Fayaz procured 12kgs of heroin from the absconding accused Pankaj of Mandsaur, Madhya Pradesh and he arranged the respondents to collect the drugs and to smuggle the same to Sri Lanka by boat. The respondents had gone to Krishnagiri from Chennai, stayed in Geetha Lodge, Byrappa Street, Krishnagiri to receive the drug from Pankaj on 16.08.2004. This information recorded as per Section 42 of NDPS Act and produced by PW1 to PW6, Superintendent, NCB. PW6 on receipt of the same gave instruction to PW1, PW2, PW3 & PW5, a Team of Officers of NCB to take necessary action as discussed and proposed. Thereafter, the NCB Team left Chennai reached Krishnagiri on 16.08.2004. As per direction of PW6, enlisted two independent witnesses viz., PW8 and R.Kubendiran, Managers of Geetha Lodge, Krishnagiri, enquired with them, directed to produce arrival register of the Lodge. The staffs produced the arrival register and informed that except Room No.207, the other rooms occupied by regular guest and Room No.207 occupied by three persons and booked in the name of Tamilselvan. The NCB team along with independent witnesses were keeping surveillance and at about 11.00 hours, a tall man wearing specs with wheatish colour carrying blue-grey colour rexin bag entered the lodge, enquired Room No.207 and as directed he proceeded to Room No.207. The NCB Team and



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independent witnesses followed him and knocked the door of Room No.207, the 1st respondent opened the door, three others were seen inside the Room No.207 namely the 2nd respondent, absconding accused Pankaj and one Senthilkumar. The NCB Team disclosed their identity, enquired the Occupants and the respondents produced the blue-grey colour rexin bag (MO11) containing contraband (MO1 to MO10). The contraband tested with test kit, samples taken, the mobile phones of the respondents 1 and 2, cash and other incriminating documents all seized and affixed with NCB seal. The entire procedure recorded in the mahazar (Ex.P4) and the seizure process took place between 11.00 am and 04.00 p.m. Ex.P1 is in compliance to Section 42 and Ex.P4 is in compliance to Section 50 and Ex.P10 is in compliance to Section 57 report, is the case projected by the prosecution.

23.In this case, the Intelligence Officers examined as PW1, PW2, PW3 & PW5. PW6 is the Superintendent, a Superior Officer of PW1, PW2, PW3 & PW5. PW4 & PW7 are from Forensic Department and PW8 is the Manager of Geetha Lodge. PW2, PW3 & PW5 deposed the fact of coming as a team along with PW1 & PW6 to Krishnagiri, entering Geetha Lodge, signing as witness in the mahazar (Ex.P4), issuing summons under Section 67 of NDPS Act to the Occupants of Room No.207. From the summon (Ex.P13) issued by PW2 to



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the 1st respondent, summon (Ex.P20) issued by PW3 to Pankaj, summon (Ex.P35) issued by PW5 to the 2nd respondent, summon (Ex.P17) issued by PW2 to PW8, summon (Ex.P36) issued by PW5 to Senthilmurugan, it is seen that all the summons issued on 16.08.2004 calling upon the concerned to appear before the Intelligence Officers at 04.30 p.m. again in Room No.207 of Geetha Lodge for enquiry. Right from 11.00 a.m to 04.00 p.m. the search and seizure conducted in the same Room No.207 and the enquiry is again in the same Room No.207 at 04.30 p.m.

24.In this case, the respondents 1 and 2 and the absconding accused Pankaj shown arrest at about 23.00 hours on 16.08.2004 and produced for remand on 17.08.2004 as per Ex.P24. The statement under Section 67 of NDPS Act of the respondents (Exs.P14 & P37) supposed to be given in the meantime. The admitted position is that even prior to 67 statements of the respondents 1 and 2, the contraband (MO1 to MO10) already seized. The Hon'ble Apex Court in the case of *Tofan Singh* (cited supra) held that Section 67 statement is akin to Section 27 of Indian Evidence Act, 1872 and it can be used only for the limited purpose of any discovery. In this case, the contraband discovered and seized much prior to 67 statements. Hence, 67 statement has no relevance and cannot be relied upon in any manner in this



case. Now on the factual aspects it is seen that there are vital contradictions in the evidence of PW1 and PW6 who are the two witnesses projected for search, seizure and recovery of contraband. PW1's evidence is that the respondents produced 10 packets of heroin (MO1 to MO10) from blue-grey colour rexin bag (MO11). PW6's evidence is that the respondents produced blue-grey colour rexin bag (MO11) containing contraband (Mo1 to MO10) and that MO11 was taken from under the cot and produced by the respondents. The seizure of the contraband from whose possession is the vital aspect to be decided in this case. This aspect is in contradiction which causes serious doubt in the manner of seizure and recovery of the contraband. Added to it, the official witnesses/Intelligence Officers PW2, PW3 and PW5 not spoken anything as regards search, seizure and recovery of contraband from the respondents. The evidence of these witnesses is limited to the extent of attesting the mahazar (Ex.P4). This seizure mahazar projected for seizure of contraband as well as for compliance of Section 50 which is in clear violation of mandatory condition.

25.The other two independent witnesses are PW8 and R.Kubendiran. PW8 not supported the case of the prosecution and alternate witness R.kubendiran not examined as witness in this case, hence, the mahazar (Ex.P4)



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has to be looked with suspicion. The narration in Ex.P4 starts and ends as though it is recorded by the independent witnesses who has narrated the happenings in Room No.207, but it is signed by PW1 to show he prepared. In the absence of no independent witness corroborating the contents of the mahazar, Ex.P4 loses its significance and it cannot be said it is proved in the manner known to law. Added to it, PW8's evidence is that at 02.30 p.m. the NCB officials came to Geetha Lodge with respondents, booked Room No.207 in the name of Tamilselvan, thereafter, took the respondents to Room No.207. Hence, the search, seizure and recovery gets further weakened. PW8 further stated that two uniformed local Police personnels accompanied NCB team. The subsequent recovery from Tata Safari vehicle is projected against the absconding accused Pankaj and has nothing to do with the respondents.

26.In this case, the entire episode of search, seizure and recovery took place in Room No.207 as could be seen from Exs.P4 & P10. The evidence of PW1 that the Room No.207 is of 10 X 10 sq.ft where entire proceedings from 11.00 a.m. till 04.00 p.m. and arrest of the accused at 11.00 p.m. all happened in Room No.207 of Geetha Lodge. The admitted position is that there were around 13 to 14 persons inside the Room No.207 during this period, further in the room there was already a double coat, small cupboard and shelf. Hence,



13 persons inside such small room and recording search and seizure (Ex.P4) is highly improbable. Added to it, there are vital contradictions in the evidence of PW1 & PW6.

27.The Hon'ble Apex Court in the case of ***SK Raju v. State of West Bengal*** reported in ***(2018) 9 SCC 708*** held that “*the duty of the empowered officer under Section 50 is not discharged by a mere askance or casual communication, the suspect must be made aware of his legal right in a meaningful way.*” In the case of ***State of NCT of Delhi v. Mohd. Jabir*** reported in ***2024 SCC OnLine SC 4374***, the Hon'ble Apex Court had held that “*the provision vide sub-section (1) mandates that when an officer duly authorized under Section 42 is about to search a person under the provisions of Sections 41, 42 or 43, he shall, if the person about to be searched so requires, take the person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. It is obvious that the intent behind the provision is to ensure that the person about to be searched is made aware of the opinion to be taken before a third person other than the one who is conducting the search. Use of the expression “nearest” refers to the convenience as the suspect is to be searched. Delay should be avoided, as is reflected from the use of the word*



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“unnecessary delay” and the exception carved in sub-section (5) of Section 50

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of the NDPS Act. Nothing more is articulated and meant by the words used, or the intent behind the provision.”

28.The Hon’ble Apex Court made authoritative pronouncement in the case of **Tofan Singh** (cited supra) with regard to admissibility of statement made under Section 67 which is akin to Section 27 of Indian Evidence Act, 1872. In the case of **Mohanlal** (cited supra) drawing of samples at the time of seizure should be in accordance with law and the procedures to be followed are mandatory. Any violation of above provisions cannot be condoned and the accused facing trial in NDPS Act cases to be acquitted. As far as this case is concerned, the prosecution miserably failed to prove the case both on factual and legal aspects.

29.Considering all these factors and rulings of the Hon’ble Apex Court, the trial Court by a well-reasoned and elaborate judgment rightly dismissed the complaint and acquitted the respondents. In view of the above, this Court finds no reason to interfere with the judgment of the trial Court.



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30.In the result, this Criminal Appeal stands dismissed confirming the judgment of acquittal dated 25.10.2013 passed by the learned I Additional District & Sessions Judge, Special Court for E.C Act Cases, Salem in C.C.No.85 of 2005.

12.01.2026

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
vv2

To

- 1.The I Additional District & Sessions Judge,
Salem.
- 2.The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai-90.
- 3.The Special Public Prosecutor for NDPS Cases,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
Crl.A.No.421 of 2014

12.01.2026