IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 479 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
RAJESHKUMAR DHULAJI MAKVANA & ANR.

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Appearance:
MS JYOTI BHATT APP for the Appellant(s) No. 1
MR CR ABICHANDANI(2421) for the Opponent(s)/Respondent(s) No. 1
MR VO JOSHI(5883) for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 09/10/2026

ORAL JUDGMENT

CHALLENGE:

1. The appellant- State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 05.05.2007 passed by the learned Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad (hereinafter be referred to as “the Trial Court”) in Special [NDPS] Case No.03 of 2006, whereby the Trial Court has acquitted the respondent accused from the charges under Sections 8(c), 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter be referred to as the “Act”) .

FACTS :

2. The accused No.2, Sharifabibi, was previously engaged in the clandestine sale of brown sugar and in connection with the same, offences were registered against her at Madhavpura Police Station vide Prohibition / NDPS Crime Register No. 5208/99 under Sections 8(c), 21 and 22 of the NDPS Act, and at Sabarmati Police Station vide Crime Register No. 3128/04 under Sections 8(c), 21, 22 and 29 of the NDPS Act. Upon being convicted and sentenced in the said offences, she was undergoing her sentence at Sabarmati Central Jail. During that period, accused No.1, Rajeshkumar Dhulaji Makwana, was serving as a Police Constable and was posted at Sabarmati Central Jail. Since Sharifabibi's son and husband used to visit her in jail, accused Rajesh became acquainted with Sharifabibi. After Sharifabibi was released from jail, accused Rajesh used to meet her and in this manner, they remained acquainted with each other. From 04.06.2006 onwards, Sharifabibi was in contact with accused Rajesh Dhulaji Makwana. As per the telephonic conversation between them, a person known to Sharifabibi as “Nazir Chacha” was to meet Rajesh at around 9:00 a.m. on 08.06.2006 at Naroda Patiya, where auto-rickshaws usually stand, and was to hand over a quantity of brown sugar to him. The accused Rajesh was instructed to take the said quantity and deliver it near the Ranip Police Lines, at the three-way junction near the Ranip Octroi Naka. Accordingly, on 08.06.2006, in the early morning, accused Rajesh Dhulaji Makwana went to the place at Naroda Patiya where auto-rickshaws usually stand and there, he met a person aged about 45 years, who handed over to him a quantity of contraband article and Rajesh then took the said quantity for delivery to Sharifabibi and proceeded on his motorcycle bearing Registration

No. GJ-18-M-9559 towards the three-way junction near the Ranip Police Lines and Ranip Octroi Naka. During this process, at about 18:00 hours, accused Rajesh was apprehended by the police personnel of the Narcotics Cell along with 102 grams of contraband article valued at Rs.20,000/-, the motorcycle bearing registration No. GJ-18-M-9559 allegedly used in the commission of the offence, two Nokia mobile phones, and cash amounting to Rs. 13,573/-. The accused Sharifabibi was subsequently apprehended during the course of the investigation. It is alleged that both the accused persons assisted each other in the commission of the offence, thereby committing an offence under the NDPS Act.

2.1 The charge against the accused came to be framed by the trial Court for the aforesaid offences against the accused. On being explained it to them, the accused have denied having committed any offence. The accused pleaded not guilty to the charge and pleaded for trial and hence, the case was tried by the trial Court.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

P.W. No.	Name of Witnesses		Exhibit
1	Kalubhai Tapubhai Manjariya	Complainant	9
2	Gautambhai Prabhatbhai Bharwad	Panch Witness hostile	34
3	Pravinbhai Ramanbhai Chauhan	Panch Witness	40
4	Dharmendrasinh Anopsinh Jadeja	Witness	41
5	Sanjakumar Shankarlal Shah	Witness	43
6	Manedrasinh Shivaji Kher	Witness	44
7	Ismailbhai Musabhai Patel	Witness	47

8	Sanjaybhai Tribhovansinh Thakur	Witness	48
9	Ashishbhai Premnarayan Kher	Witness	49
10	Dhirenbhai Jayantilal Lariya	Witness	52
11	Prabhudas Vechatji Kotwal	Investigating Officer	57
12	Hanifbhai Ishakbhai Kureshi	Witness	66

4. In addition to this, the prosecution has also produced the following documentary evidence.

Sr. No.	Particulars	Exhibit
1	Original complaint	10
2	Fact of information	11
3	For giving information to Deputy Superintendent of Police, M.D.P.L.L.	12
4	Resolution under Section 42 of the NDPS Act	13
5	Accused was given an explanation as per Section 50 of the NDPS Act	14
6	Copy of letter of understanding	15
7	Scientific Officer to test quantity of narcotics on site	16
8	Certificate issued by FSL Officer	17
9	Sanjay Shankarlal Shah was ordered to weigh the quantity of narcotics	18
10	Certificate issued by the weighbridge	19
11	Letter under Section 52(1) of the NDPS Act	20
12	Seizure Memo	21
13	Letter written to the District Collector	22
14	With regard to information to the Superintendent of Police (NDPS) about the raid	23
15	Forwarding Form filled for material inspection in FSL	24
16	Signature Slip of Panchas	25

17	Signature Slip of Panchas	26
18	Signature Slip of Panchas	27
19	Signature Slip of Panchas	28
20	Panchnama	39
21	Receipt of muddamal	45
22	List of receipt of muddamal	46
23	Print called from the Airtel Company	50
24	Copy of the report written to Airtel Company	51
25	Copy of the report written to Hutch Company	53
26	Telecom print from Hutchison India	54
27	Print called for from the Hutch Company	55
28	With regard to sending the muddamal for investigation to the Deputy Director, FSL	58
29	Letter from FSL	59
30	Letter and analysis certificate from FSL Gandhinagar	60
31	Authority to take muddamal from the FSL	61

5. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein they denied of having committed any offence and have stated that they are innocent.

6. After hearing both sides and considering the evidence on records, the trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against them.

7. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant has preferred this appeal.

8. Heard Ms.Jyoti Bhatt, learned Additional Public Prosecutor for the appellant – State of Gujarat, Mr.P. R. Abichandani, learned counsel for respondent No.1 and Mr.VO Joshi, learned counsel for the

respondent No.2 at length.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

9. Ms.Bhatt, learned Additional Public Prosecutor for the appellant has submitted that the impugned judgment and order of acquittal passed by the Trial Court is contrary to law and the evidence available on record. She has submitted that the Trial Court erred in holding that the prosecution had failed to prove its case beyond reasonable doubt. She has submitted that the present respondent accused is also involved in other offence of Indian Penal Code as well.

9.1 Learned Additional Public Prosecutor for the appellant has submitted that the prosecution examined several witnesses in support of its case and produced various documentary pieces of evidence on record however, without properly appreciating the oral as well as documentary evidence in its correct perspective, the Trial Court erroneously acquitted the accused of the offences with which they were charged. Therefore, the impugned judgment and order deserve to be quashed and set aside.

9.2 Learned Additional Public Prosecutor for the appellant has submitted that the Trial Court erred in holding that the prosecution had failed to prove beyond reasonable doubt that the accused, being public servants, had committed the offence of criminal misconduct by indulging in the aforesaid activities.

9.3 Learned Additional Public Prosecutor has submitted that the prosecution has proved its case beyond reasonable doubt by producing cogent, reliable and trustworthy oral as well as documentary evidence. She has submitted that the prosecution

examined 12 witnesses and produced 31 documentary evidences in support of its case. However, the Trial Court failed to properly appreciate the evidence on record in its true and proper perspective and thereby committed a grave error in acquitting the accused. She has submitted that the Trial Court erred in holding that the search was not carried out in the presence of Magistrate and/or Gazetted Officer and hence, the Investigating Officer has not complied with mandatory provisions of Section 50 of the Act. She has submitted that there is direct and indirect evidence connecting the accused with implanting of the opium and the prosecution has established the case against the accused beyond reasonable doubt and also proved the charges levelled against the accused, however, the trial Court has not considered such fact and acquitted the accused, which is unjust and illegal.

9.4 Learned Additional Public Prosecutor has submitted that the Trial Court erred in holding that the accused could not be convicted for the offences punishable under Sections 8(c), 21 and 29 of the Act, despite sufficient evidence establishing their conscious and illegal possession of the contraband. She has submitted that the Trial Court has not properly appreciated the version of P.W.1 – Kalubhai Tapubhai Manjariya examined at Exhibit 9 and P.W.11 Prabhudas Vechatji Kotval examined at Exhibit 57. She has submitted that there are several offences registered against accused No.2 and accused No.1 was caught red handed with brown sugar.

9.5 Learned Additional Public Prosecutor has submitted that the evidence of the prosecution witnesses, read with the evidence of the Investigating Officer, clearly establishes that the accused were in conscious possession of the contraband and the alleged

contradictions regarding the manner in which the brown sugar was kept or seized and do not affect the core of the prosecution case. She has submitted that the FSL report and other evidence on record establish that the seized substance was brown sugar and that the accused had committed offences punishable under Sections 8(c), 21 and 29 of the Act.

9.6 Learned Additional Public Prosecutor has submitted that the necessary procedure under the Act was duly complied with and the evidence on record establishes that the contraband was recovered from the possession of the accused, however, the Trial Court, without properly considering the material evidence, committed a grave error in discarding the prosecution case.

9.7 In view of the cogent and reliable oral and documentary evidence, the learned Additional Public Prosecutor has submitted that the Trial Court ought not to have acquitted the accused. The findings recorded in the impugned judgment are contrary to the evidence on record and suffer from serious errors of appreciation. It was, therefore, submitted that the judgment and order of acquittal deserves to be quashed and set aside by this Hon’ble Court.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1:

10. Per contra, Mr.Abichandani, learned counsel for the respondent No.1 has supported the impugned judgment and order and has submitted that the Trial Court has not committed any error of law and fact in acquitting the accused from the charges levelled against him. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore,

the trial Court has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged crime in question. He has submitted that the evidence led by the prosecution suffers from material contradictions, omissions, and inconsistencies, which create serious doubt about the veracity of the prosecution case and the prosecution has failed to establish the essential ingredients of the alleged offences and has not produced reliable, trustworthy, and corroborative evidence connecting the respondent with the commission of the alleged offence. He has submitted that it is a settled principle of criminal jurisprudence that the presumption of innocence in favour of an accused is further strengthened by an order of acquittal. It is submitted that unless the findings recorded by the trial Court are shown to be perverse, illegal, or contrary to the evidence on record, the Appellate Court should be slow in interfering with an order of acquittal. It is submitted that the appellant has failed to point out any infirmity, illegality, perversity, or misreading of evidence in the impugned judgment and order and the findings recorded by the trial Court are based upon proper appreciation of the evidence and settled legal principles. Learned counsel for the respondents has submitted that the appeal being meritless deserves to be dismissed and the impugned judgment and order of acquittal deserves to be confirmed.

10.1 Over and above the oral arguments, learned counsel for respondent No.1 has submitted the following written submissions:-

(1) It respectfully submitted that PW 1, 4, 6, 7, 8 and 11 are Police witnesses; PW 2 and 3 are Pancha witnesses who have turned hostile; PW 5 is the goldsmith who assisted the police in weighing the

contraband. PW 9 and 10 were involved in printing and providing call details records. It is submitted that the impugned judgment is flawed inasmuch as material evidence on record was not duly considered by the Trial Court. It is, however, the case of respondent No. 1 that the impugned judgment suffers from no such infirmity and that the acquittal was rightly recorded, inter alia, on the grounds that there were serious procedural lapses in the investigation, the independent panch witnesses turned hostile, and there existed several material contradictions in the deposition of the witnesses.

(2) It is respectfully submitted that, as per the depositions of PW-1 and PW-4, PW-4 received secret information from his informant at around 8:30 a.m. on 08.06.2006 regarding accused No.1 allegedly intending to deliver brown sugar near Ranip on his motorcycle, which information was noted down by PW-4 and conveyed to PW-1. However, instead of first reducing the said information into writing and communicating the same to the superior officer as contemplated under Section 42(1) and 42(2) of the NDPS Act, PW-1 and PW-4 proceeded to verify the spot. It was only at around 10:30 a.m. that PW1 communicated the information to the superior officer and an ASI, namely one Akshay Kumar, was sent for making the necessary entry in the information register. Thus, there was an unexplained delay of approximately two hours in complying with the statutory requirements of Section 42.

(3) In this regard, reliance is placed upon the judgments of the Hon'ble Supreme Court in ***Karnail Singh v. State of Haryana, (2009) 8 SCC 539*** more particularly paragraph 17 and **Rajender Singh v. State of Haryana, AIR (2011) SC 414** more particularly pParagraph 4 and 5, wherein it has been held that compliance with

Section 42(1) and 42(2) should ordinarily precede the search and seizure and that delayed compliance is permissible only in genuine emergent circumstances and where the delay is satisfactorily explained. In the present case, the prosecution has neither demonstrated any such emergent circumstance nor provided any satisfactory explanation for the delay. The fact that the officers had sufficient time to proceed to the spot for verification before recording and communicating the information further demonstrates that the delay was not occasioned by any compelling urgency.

(4) It is submitted that the evidence of the prosecution establishes that the mandatory safeguard contained in Section 50 of the Act, i.e., the legal right to be searched in front of a Gazetted Officer or a Magistrate was not duly complied with in the present case. As per the deposition of PW-1, accused No.1 was informed that the officers present were Gazetted Officers, yet if he desired to have any other Magistrate or any other Gazetted Officer present, arrangements could be made and his search could be conducted in their presence. Thereafter, accused No.1 stated to have replied that PW-1 could conduct his search. The evidence of PW-1 itself demonstrates that the accused was not merely informed of his statutory right. He was presented with a choice as to who would conduct his search and one of the choices presented to him was PW - 1 himself, who was part of the raiding party.

(5) In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court in ***State of Rajasthan v. Parmanand & Anr., AIR 2014 SC 1384*** more particularly paragraph 14 and 15, wherein, in materially similar circumstances, the Hon'ble Supreme Court held that offering an accused an additional option of being

searched before an officer who was himself a member of the raiding party amounts to a breach of Section 50 (1) of the NDPS Act. The Hon'ble Supreme Court further held that it was improper for the officer conducting the search to offer a third alternative to the accused when Section 50(1) does not provide for such an alternative and when such option would frustrate the very purpose of the statutory safeguard. The fact that Accused No. 1 allegedly stated that PW-1 could conduct his search cannot cure the aforesaid defect, since the question is not whether the accused ultimately accepted such option, but whether such an option could lawfully have been offered to him in the first place. The aforesaid principle has subsequently been reiterated by the Hon'ble Supreme Court in ***State of Himachal Pradesh Vs. Surat Singh, Criminal Appeal No. 96 of 2018*** more particularly paragraphs 17 and 18.

(6) It is further respectfully submitted that there is a material discrepancy in the depositions of PW-1 and PW-4 as regards the manner in which the option under Section 50(1) of the Act was put to accused No.1. PW-1 and PW-4 have not given a consistent account of the words used while apprising accused No.1 of his alleged right, particularly with regard to the option of being searched before PW-1 himself.

(7) It is submitted that PW-1 and PW-4, both being Gazetted Officers present at the place of the alleged offence, were themselves members of the raiding party and were presented to accused No. 1 as Gazetted Officers before whom his search could be conducted. Thus, PW-1 and PW-4 acted in a dual capacity, i.e. as members of the raiding party as well as the Gazetted Officers before whom the search was offered and conducted. PW-1 and PW-4, though Gazetted Officers,

were themselves members of the raiding party and therefore could not be treated as independent officers for the purpose of Section 50(1) of the Act. The Hon'ble Supreme Court in ***State of Rajasthan Vs. Parmanand & Anr., AIR 2014 SC 1384***, has held that offering an officer who is part of the raiding party as a third option frustrates the safeguard contemplated under Section 50(1). The said principle has also been reiterated in ***Joseph Achola Ouma v. State of Goa & Ors., Criminal Appeal No. 1069 of 2024*** of the Bombay High Court (Goa Bench) more particularly paragraph 32, wherein it was held that a Gazetted Officer forming part of the raiding/investigating team cannot be regarded as an independent officer. Thus, the mere fact that PW-1 and PW-4 were Gazetted Officers cannot amount to compliance with Section 50(1) Act, when they were themselves members of the raiding party.

(8) It is submitted that, as per the deposition of PW-1 and the contents of the Panchnama, accused No. 1 was taken for the purpose of weighing the contraband / muddamal, and that throughout the said journey, custody of the contraband remained with Accused No. 1 himself. However, it is submitted that PW-5, the goldsmith, being an independent witness who weighed the said muddamal / contraband, has in his deposition, contradicted the aforesaid version of the prosecution, thereby materially damaging the prosecution's case.

(9) As per the deposition of PW-1, the contraband was handed over to accused No. 1 and he, along with the panchas and other police staff, sat in a jeep and was taken to Abhushan Jewellers for the purpose of weighing the contraband. It is further submitted that, upon reaching Abhushan Jewellers, accused No. 1 was afforded an opportunity to search PW-5; however, as deposed by PW-1 himself,

accused No.1 declined to conduct such search of PW-5. It is further submitted that, as per the panchnama, the members of the raiding party, along with the panch witnesses and accused No. 1, reached Abhushan Jewellers at 16:15 hrs. were presence.

(10) Thus, when the contraband was brought to the shop for the purpose of weighing, accused No. 1 was not present at the shop and only PW-1 and PW-4 had arrived there between 1:00 p.m. and 2:00 p.m. with Accused No. 1 being brought to the shop only subsequently, at around 8:00 p.m. It is submitted that this material contradiction raises serious doubt not only regarding the presence of accused No. 1 at the shop at the relevant time, but also, more significantly, regarding the custody of the contraband itself. As per the deposition of PW-1 the contraband remained in the custody of accused No.1 until the raiding party reached Abhushan Jewellers; however, it appears from the deposition of PW-5 that Accused No. 1 was in fact brought to the shop only at a later point in time, thereby casting serious doubt on the safe and unbroken custody of the contraband during the intervening period.

(11) Further, if the members of the raiding party were already present at the jewellery shop between 1:00 p.m. and 2:00 p.m. with the alleged contraband, a serious doubt arises as to the manner in which the raid was actually conducted and, in particular, as to who had conducted the alleged raid and from whom the contraband was allegedly recovered.

(12) It is submitted that as per the depositions of PW-1, the muddamal samples were not sealed at the Police Station. Further as per PW-4, the samples were not sealed. It is submitted that this is

fatal to the prosecution's case in light of the law laid down by the Hon'ble Supreme Court in ***Gurbax Singh Vs. State of Haryana AIR 2001 SC 1002*** and the Bombay High Court in ***Koyappakalathil Ahmed Koya v. A.S. Menon, 2002 CriLJ 4502*** more particularly paragraph No.49, wherein it was observed that the NDPS Act contemplates that after seizure, the narcotic drug is to be handed over to the officer in-charge of the nearest police station, who is required to affix his own seal to the packets in addition to the seals affixed by the members of the raiding party at the time of seizure. Applying the aforesaid principle to the facts of the present case, it is submitted that as per the deposition of PW-6, PW-7, PW-8, PW-11, PW-1 and PW-4 the muddamal kept exchanging hands without there being any seal by an officer-in-charge of the police station. This falls squarely within the mischief that the above observations seek to guard against. Such failure raises a reasonable possibility of tampering with or substitution of the sample packets and consequently casts serious doubt on the sanctity of the samples. This also contravenes Section 55 of the Act.

(13) It is respectfully submitted that both the panch witnesses, namely PW-2 and PW-3, who were sole independent witnesses to the raid and the procedures conducted thereunder have turned hostile.

(14) It is respectfully submitted that, as per the deposition of PW-1, the contraband, at the time it was first seized, did not carry any characteristic smell of brown sugar. It is submitted that it was for this very reason that an FSL expert was summoned to the spot to certify that the seized substance was, in fact, brown sugar. It is further submitted that, although an FSL certificate is stated to have been issued in this regard, the said FSL officer has not been examined by

the prosecution in the course of the trial.

(15) It is respectfully submitted that, as per the panchnama, the panchnama proceedings commenced at 11:00 a.m. and continued till 6:00 p.m. on 08.06.2006. However, as per the deposition of PW-1, the raiding party reached Sabarmati Police Station only between 9:00 p.m. and 9:30 p.m. Thus, there is an unexplained delay of approximately three to three and a half hours between the conclusion of the panchnama proceedings and the arrival at the Police Station. Considering that the distance between the place of seizure and Sabarmati Police Station could ordinarily be covered within approximately 10-15 minutes, the unexplained delay assumes significance and raises a serious doubt regarding the safe custody, handling and movement of the seized contraband during the intervening period. This unexplained time gap further creates a serious doubt regarding the prosecution's version of the manner in which the muddamal was dealt with after the alleged seizure.

(16) It is respectfully submitted that the facts of the present case are squarely covered by the principles laid down by the Hon'ble Supreme Court in ***Vijay Pandey Vs. State of Uttar Pradesh, Criminal Appeal No. 1143 of 2019*** (arising out of SLP (Crl.) No. 1273 of 2019) more particularly paragraph 5 and 6, wherein it was held that the failure of the prosecution to secure any independent witness from the locality of seizure, despite the seizure having taken place in a residential/public locality, casts serious doubt on the prosecution's case, more so where no explanation is furnished for the non-availability of independent witnesses and no name of any person who may have declined to join the investigation is placed on record.

(17) Applying the aforesaid principles to the facts of the present case, it is submitted that accused No. 1 was apprehended on a public road and no independent witness from the locality of the actual apprehension was associated with the investigation at that stage, the panchas having been pre-arranged and brought along from the office of the NDPS Cell itself. It is further submitted that the mandatory requirements of Section 50 of the NDPS Act have not been duly complied with in the present case, for the reasons already submitted hereinabove. In these circumstances, it is submitted that the ratio of the aforesaid judgment applies with full force to the present case and the prosecution cannot be said to have discharged its initial burden of establishing a prima facie case beyond reasonable doubt.

(18) It is respectfully submitted that, in view of the aforesaid grounds and submissions, it would be in the interest of justice not to interfere with the judgment of acquittal passed by the Learned Sessions Court, as the prosecution has failed to establish its case against accused No.1 beyond reasonable doubt. The various procedural lapses, material discrepancies in the evidence, and unexplained delays in the course of the proceedings cast serious doubt upon the prosecution's case and the manner in which the alleged recovery and contraband were dealt with. Accordingly, the impugned judgment of acquittal deserves to be upheld and the present appeal preferred by the State deserves to be dismissed.

SUBMISSION ON BEHALF OF RESPONDENT NO.2:

11. Mr.Joshi, learned counsel for respondent No.2 has submitted that accused No.2, who has been arrested by the Police without there being any shine of evidence and material in the whole track

connecting her in any manner whatsoever with the alleged commission of offence, who has been unjustifiably arrested only on the basis of so called statement of the co-accused persons which is inadmissible in evidence under the provisions of Section 25 of the Indian Evidence Act. The respondent No.1 was arrested by the police and only on the basis of his so called statement said contraband was delivered to the present respondent No.2. this type of confessional statement is not admissible as evidence. In support of this contention, a reliance is placed upon the decision of the Hon'ble Supreme Court of India in the case of ***Tofan Singh Vs. State of Tamil Nadu, 2021(1) Crimes 208 (SC)*** wherein the Hon'ble Supreme Court has held and observed in para 155 as under:-

> *55. We answer the reference by stating:-*
>
> *i) That the officers who are invested with powers under Section 53 of the NDPS Act are " Police Officer" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*
>
> *(ii) That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.*

11.1 Learned counsel for respondent No.2 has submitted that the provision under the NDPS Act are draconian in nature and therefore the same is required to be complied with strictly because the question of life and liberty is involved and when it is so, the burden of proof is on the prosecution to establish the fact and in the case, but the same is not established by the prosecution as it is clear from the deposition of complaint, panchnama of seizure, report of FSL, moreover,

independent witness has not supported the case of the prosecution and there are huge discrepancies and contradictions in the statements of the witnesses with regard to the search and seizer, packing and sealing, affixing seal or number of seal and unauthorized and without any permission from the superior officer, recording the so called statements of the accused under Section 67 of the Act and after recording the statements of one the person under Section 67 of the Act who was, according to the case of the prosecution, the contraband had to supply to respondent No.2 but there was no material to prove the fact that the accused having any connection with accused no.1, who was in the company of the accused, the genuineness of the case of the prosecution is doubtful from the very inception and charge as framed cannot and consequently, the exclusive and conscious possession of contraband and identity thereof cannot be said to be proved that respondent no.1 was in conscious possession. No evidence means no reliable, cogent, convincing, trustworthy and unimpeachable evidence. It is Submitted that there was not a single evidence that there was any conspiracy or abetment. There should be some material against the involvement or conspiracy hatched by the present accused. There has to be presence of basic material in the form of evidence so, as to substantiate the case of the conspiracy against the present accused. The statement of accused itself cannot be termed as satisfying foundation for invoking provisions of Section 29 against the accused.

11.2 Learned counsel for respondent No.2 has also submitted that if the evidence adduced by the prosecution is appreciated keeping in view the principle of appreciated of evidence in criminal trial, then it becomes crystal clear that the prosecution has miserably failed to

prove the charge leveled against the accused. Learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of **P. Satyanarayana Murthy Vs. The District Inspector of Police and Anr., 2015 SAR (Criminal) 1142** wherein the Hon'ble Supreme Court has held and observed in para – 25 as under:-

> *In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this court in Sujit Biswas Vs. State of Assam, (2013)12 SCC 406 had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are possible, and then the benefit of doubt must be given to the accused.*"

12.3 Learned counsel for respondent No.2 has further submitted that it is a well settled principle of criminal jurisprudence that more stringent the punishment, the more burden shifted upon the prosecution to prove the offence and, therefore, strict proof is required for proving the search, recovery and seizure. In support of this contention, learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of ***Makhan Singh Vs. State of Haryana, 2015 AIAR (Criminal) 563*** more particularly paras – 16 and 17.

12.4 Learned counsel for respondent No.2 has submitted that if the evidence adduced by the prosecution is taken into consideration keeping in view the principle of appreciation of evidence in criminal trial, it becomes crystal clear that there is flagrant violation of Sections 41, 42, 50, 52, 52(A), 55 and 57 Act and also Section 102(3) of the Code of Criminal Procedure read with Section 51 of the Act. In

support of this contention, learned counsel has relied upon the decision of this Court in the case of ***State of Gujarat V/s. Jabbirsing Ratansing Indra Rajput, 2013(3) G.L.R. 1952***. In this case, the report under Section 102(3) of the Code of Criminal Procedure, 1973 is not made by the prosecuting agency to the Magistrate having territorial jurisdiction and thus, there is violation of Section 102(3) of the Code. A reliance is placed upon the decision of the Division Bench of this Court in the case of ***Shivabhai Gajmalbhai V/s. State of Gujarat, 1996 (2) G.L.R. 64***.

12.5 It is submitted that there is violation of Section 52(2) of the Act. The Investigating Officer had not given application for inventory before Magistrate nor application was submitted to him. This contention is fortified by the decision of the Hon'ble Supreme Court in the case of ***Mohammed Khalid and Anothers V/s. The state of Telangana*** in ***Criminal Appeal No. 1610 of 2023***. It is also submitted that there are material contradiction, omissions, discrepancies and inconsistencies in the depositions of the prosecution witnesses and one prosecution witness diametrically deposed opposite to the other and this type of evidence cannot be believed in criminal trial at all. In support of this contention, a reliance is placed upon the decision of the Hon'ble Supreme Court in the case of ***Bhola Ram Kushwaha V/s. State of Madhya Pradesh, 2001 AIR (SC) 229***. It is also submitted that the Standing Instruction No.1/88 dated 15th March, 1988 and Standing Order No. 2/1988 dated 11th April, 1988 issued by the Narcotic Control Bureau, New Delhi are not complied with regarding the drawl, storage and testing and also regarding the receipt, custody and storage of the samples and muddamal.

12.6 It is also submitted that one of the cardinal principles of Criminal Jurisprudence and also the appreciation of evidence in criminal trial is that the prosecution has to prove its case against the accused beyond all reasonable doubt and when from the evidence on record, a reasonable doubt is created by the defence in the mind of the Court and when it is so, then the benefit of that doubt is required to be given to the accused. This contention is fortified by the decision of the Hon'ble Supreme Court of India in the case of ***Radheyshyam V/s. Union of India, 2012(2) Criminal 721***. It is submitted that from the evidence on record, safe custody of the seized articles is not proved by the prosecution and when it is so, then the charges cannot be said to be proved. This contention is fortified by the decision of the Hon'ble Supreme Court of India in the case of ***State of Gujarat V/s. Ismail U. Haji Patel and Another, (2013)12 SCC 291***.

12.7 Learned counsel for respondent No.2 has submitted that the arrest panchnama of the accused is not prepared, the arrest register is not proved, grounds of arrested are not supplied. Thus, Section 60A of the Code of Criminal Procedure, 1973 is not complied with at all by the prosecution and so also, the genuineness of the case of the prosecution becomes doubtful. That not a single documentary evidence is proved by the prosecution as per the provision of the Indian Evidence Act. Moreover, all the documents are prepared by the police to suit the prosecution story and the time is also adjusted in the documents by the police to suit the prosecution story. That the so called electronic record produced by the prosecution in this case is not proved as required under Section 65B of the Indian Evidence Act and no certificate of its genuineness is produced by the prosecution as required under Section 65b(4) of the Indian Evidence Act. It is

submitted that no scientific investigation is done by the prosecuting agency. Chance prints of the so called accused were not taken from the bags to be sent for comparison with admitted finger prints of the accused for Expert opinion. It is also submitted that the prosecution has failed to prove its case on fact and law also. If the case of the prosecution is seen, it can only be said that the prosecution has no case at all and this is clearly as case of 'no evidence. That the provisions in the Act being draconian in nature and so, they are required to be complied with strictly because the question of life and liberty of the accused is involved. In this case, not a single provision of the Act or the Cr.P.C. is complied with by the prosecuting agency and there is flagrant violation of all such provision under the and the Cr.P.C.

12.8 Learned counsel has further submitted that it is also a settled principle of Criminal Jurisprudence that more serious the offence, striker the degree of proof, since higher degree of assurance is required to convict the accused. Moreover, it is also a cardinal principle and well settled principle of criminal jurisprudence that when two view are possible, then the view favourable to the accused should be taken. It is also a well settled principle of criminal jurisprudence that suspicion, however grave it may be, cannot take place of legal proof. It is also a well settled principle of criminal justice delivery system that "fouler the crime higher the proof." That almost all the principle of appreciation of evidence in criminal trial after referring to the plethora of decisions, the Hon'ble Supreme Court of India in the case of accused No.1 referred to above reiterated the same and if all these principle are taken into consideration while appreciating the prosecution evidence in criminal trial, then it becomes crystal clear or

as clear as day that the prosecution has miserably failed to prove its case on facts and law. It is submitted that taking the cumulative effect of all the circumstances and the evidence, it is crystal clear or as clear as day that the material placed on record by the prosecution does not bring home the charge against the accused beyond all reasonable doubt and when it is so, then the accused deserves to be acquitted of all the charges leveled against him.

ANALYSIS:

13. On perusal of the impugned judgment and order of acquittal passed by the trial Court, the following questions are required to be analyzed:-

(1) whether the trial Court has rightly justified in passing the judgment and order of acquittal.
(2) whether the trial Court has rightly appreciated the evidence led by the prosecution in recording the reasons.
(3) whether the impugned judgment and order suffers from any illegality, irregularity and perversity in the impugned judgment and order of acquittal.
(4) whether the prosecution has proved the charge levelled against the accused beyond reasonable doubt whether the oral evidence of the prosecution witnesses is proved.
(5) Whether the accused were held guilty for the alleged offence.

CONCLUSIONS:

14. This Court has perused the relevant documents and material placed on record and also gone through the judgment and order passed by the Trial Court as well as the record and proceedings.

15. In light of the aforesaid submissions made by the learned Additional Public Prosecutor and upon perusal of the impugned judgment and order of acquittal as well as the evidence recorded by the Trial Court, the issues framed by the Court for determination are required to be examined in light of the facts and circumstances of the present case.

16. On perusal of the evidence of P.W.1 being raiding officer and P.W.2 being panch witness, it appears that P.W.2 has not supported the case of the prosecution. From their cross-examination, the prosecution is unable to cull out any clinching evidence against the accused. On perusal of the evidence of P.W.1 and P.W.4 being raiding officers, it appears that there is major inconsistency found in their depositions. If the Court is considered the evidence of P.W.11 and so far as the presence of P.W.1 and P.W.4 is concerned, it emerges that P.W.11 is not referring presence of P.W.1 and P.W.4 at Police Station whereas P.W.1 and P.W.4 specifically stated before the Court below that after completing the raid, they went to the Police Station and met P.W.11. So far as evidence of P.W.11 is concerned, he has not recorded the statement of the raiding officer along with the police constable, who were present and there is vital discrepancy in their evidence. The prosecution is unable to prove the fact with regard to compliance of the mandatory provisions of Section 42(2), 50(1), 53, 55 and 57 of the Act. Whereas, the involvement of accused No.2 in the alleged offence is only on the basis of the statement of the co-accused made before the police during the course of custody. As per Section 67 of the Act and the Indian Evidence Act, it cannot be considered the case against accused No.2 since she was involved in the alleged crime on the basis of the statement made by accused

No.1 during the interrogation and in presence of the police witness. Therefore, there are basic loopholes and defect in the investigation and the case of the prosecution is that on one Nazir Chacha, however, there was no any material or evidence with regard to who was Nazir Chacha; whether he was arraigned as an accused in the alleged offence or whether there was any investigation, nothing was come on record.

17. If this Court is considered the evidence of P.W.8 being Goldsmith running a shop of Aabhushan Jewelers in Ranip area, it emerges that the evidence of this witness is not supported the case of prosecution and there is serious discrepancy in the evidence of this witness and the evidence of P.W.1 and P.W.4. In light of the facts of the case and the evidence available on record, the Trial Court has, while passing the impugned judgment and order of acquittal, not committed any error of facts and law.

18. At this stage, it is appropriate to refer Sections 42, 50, 55 and Section 57 of the NDPS Act which read as under:-

> ***"42. Power of entry, search, seizure and arrest without warrant or authorisation.****—(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intellegence or any other department of the Central Government including para-military 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 personal 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.

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 nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

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

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

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

[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section100 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.

[50A. Power to undertake controlled delivery.—*The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—*
(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.

55. Police to take charge of articles seized and delivered.*—An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which*

may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

57. Report of arrest and seizure.*—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.*

[57A. Report of seizure of property of the person arrested by the notified officer.—Whenever any officer notified under section 53 makes an arrest or seizure under this Act, and the provisions of Chapter VA apply to any person involved in the case of such arrest or seizure, the officer shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure].”

19. Now, considering the above referred provision of the Act and the decisions relied upon by the learned counsel for the respective respondents, the prosecution miserably failed to establish the compliance of the above referred provision of the Act.

20. At this stage, it is appropriate to refer the decision of the Honourable Apex Court in the case of ***State of Punjab Vs. Balbir Singh reported in AIR 1994 SC 1872,*** whereby Hon’ble Apex Court has held as under:-

“Head Note (D) Narcotic Drugs and Psychotropic Substance Act (61 of 1985), Ss. 50, 41, 42 - Search and Seizure - On prior information empowered officer acting under S.41(2) of S.42-Should comply with provisions of S.50-Provisions of S.50 are mandatory.

17. One another important question that arises for consideration is whether failure to comply with the conditions laid down in Section 50 of the NDPS Act by the empowered or authorised officer while conducting the search, affects the prosecution case. The said provision (Section 50) lays down that any officer duly authorised under Section 42, who is about to search any person under the

provisions of Sections 41, 42 and 43, shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such requisition is made by the person to be searched, the authorised officer concerned can detain him until he can produce him before such Gazetted Officer or the Magistrate. After such production, the Gazetted Officer or the Magistrate, if sees no reasonable ground for search, may discharge the person. But otherwise he shall direct that the search be made. To avoid humiliation to females, it is also provided that no female shall be searched by anyone except a female. The words "if the person to be searched so desires" are important. One of the submissions is whether the person who is about to be searched should by himself make a request or whether it is obligatory on the part of the empowered or the authorised officer to inform such person that if he so requires, he would be produced before a Gazetted Officer or a Magistrate and thereafter the search would be conducted. In the context in which this right has been conferred, it must naturally be presumed that it is imperative on the part of the officer to inform the person to be searched of his right that if he so requires to be searched before a Gazetted Officer or a Magistrate. To us, it appears that this is a valuable right given to the person to be searched in the presence of a Gazetted Officer or a Magistrate if he so requires, since such a search would impart much more authenticity and creditworthiness to the proceedings while equally providing an important safeguard to the accused. To afford such an opportunity to the person to be searched, he must be aware of his right and that can be done only by the authorised officer informing him. The language is clear and the provision implicitly makes it obligatory on the authorised officer to inform the person to be searched of his right.

21. In Miranda v. Arizona17 the Court, considering the question whether the accused be apprised of his right not to answer and keep silent while being interrogated by the police, observed thus :

"At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere."
It was further observed thus :

"The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the

individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system that he is not in the presence of persons acting solely in his interest."

When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under Section 50 in the context is all the more important and valuable. Therefore it is to be, taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate. Thus the provisions of Section 50 are mandatory.

25. The question considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows :

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal.

Likewise only empowered officers or duly authorized officers as

enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of Cr. PC fails to strictly comply with the provisions 'of Sections 100 and 165 Cr. PC including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of Cr. PC namely Sections 100 and 165 Cr. PC and if there is no strict compliance with the provisions of Cr. PC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while

appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case.

21. At this stage, it is appropriate to refer the the decision in case of ***H.I. Majmudar Intelligence Officer vs. Santosh Pandurang Setty reported in 2026 (0) AIJEL HC 253136,*** whereby the Hon'ble Apex Court has held as under:-

'Heard Note (c) Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 42, 50 and 57- Search and seizure Mandatory provisions - Non-compliance - At the time of search and seizure, there was clear violation of S. 42 of the NDPS Act - Held, provision of search and seizure under S. 42 is mandatory and non-compliance thereof is impermissible under law - Reliance placed on Boota Singh v. State of Haryana, (2021) 19 SCC 606; Karnail Singh v. State of Haryana, (2009) 8 SCC 539; Sukhdev Singh v. State of Haryana, (2013) 2 SCC 212; State of Rajasthan v. Jagraj Singh @ Hansa, (2016) 11 SCC 687.

8. Further, re-appreciating the evidence, it appears that, as per the case of the prosecution, the statements of the witnesses were recorded and as per the case of the prosecution, the accused Nos. 1 to 3 were engaged in transportation of contraband, and the said fact

is revealed on basis of statements of the co-accused i.e., accused Nos. 2 and 3, but nowhere has any evidence supported the said contention, and in absence of any legal evidence qua involvement of the accused, more particularly how and from where the contraband was loaded and shifted to the godown, no evidence on record, and even no independent witness has supported the case of the prosecution qua the alleged conspiracy or meeting of minds on the part of the accused persons. Even as per the complaint, the prosecution has relied upon the statements of the accused persons as incriminating evidence, and such inculpatory statements are also not true which support any evidence and no corroborative piece of evidence is on record to show that the accused has hatched conspiracy and engaged in transportation of huge contraband. The only evidence led before the learned Sessions Court is that the accused No.2 was present at the time of raid, and it is stated that contraband was seized from his possession but no evidence qua accused Nos. 1 and 3 has been collected. Not only that, the ownership of the godown is also not proved and the owner of the godown is not cited as a witness. The independent witness, Deepak Parikh, turned hostile and has not supported the case of the prosecution. Even based on whatever allegations are levelled against the accused and evidence led, it clearly reveals that the prosecution has not followed the mandatory provisions for search and seizure under the NDPS Act. At the time of search, there was a clear violation of Section 42 of the NDPS Act and the learned Sessions Judge has also assigned reason for that qua violation of Sections 42, 50 and 57 of the NDPS Act. The provision of search and seizure under Section 42 is mandatory and in this regard, reference is required to be made to the judgments of the Hon'ble Apex Court in the case of Boota Singh Vs. The State of Haryana reported in (2021) 19 SCC 606; Karnail Singh Vs. State of Haryana reported in (2009) 8 SCC 539; Sukhdev Singh Vs. State of Haryana, reported in (2013) 2 SCC 212, and State of Rajasthan Vs. Jagraj Singh @ Hansa, reported in (2016) 11 SCC 687. Non-compliance of the mandatory provision of Section 42 is absolutely clear from the record and such non-compliance is impermissible under the law. Hence, the learned Sessions Judge has not committed any error in recording findings qua non-compliance of mandatory provisions under the NDPS Act."

22. In the decision in case of ***Karnail Singh v. State of Haryana, (2009) 8 SCC 539,*** the Hon'ble Apex Court has held as under:-

"(6) In the light of the above decisions and the principles enunciated therein, it would be appropriate to refer to Section 42 of the NDPS Act

which is relevant for the present purpose as it stood before its amendment by Act 9 of 2001. It reads as under:-

"*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 or of the Border Security Force 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 personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence 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 Chapter IV relating to such drug or substance; 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 Chapter IV relating to such drug or substance:

Provided 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 forthwith send a copy thereof to his immediate official superior."

Sub-section (2) as replaced by Act 9 of 2001 is extracted below:

"*(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.*"

15) Under Section 42(2) as it stood prior to amendment such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case, it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance of which may vitiate a trial has been restricted only to the provision of sending a copy of the information written down by the empowered officer to immediate official superior and not to any other condition of the Section. Abdul Rashid (supra) has been decided on 01.02.2000 but thereafter Section 42 has been amended with effect from 02.10.2001 and the time of sending such report of the required information has been specified to be within 72 hours of writing down the same. The relaxation by the legislature is evidently only to uphold the object of the Act. The question of mandatory application of the provision can be answered in the light of the said amendment. The non-compliance of the said provision may not vitiate the trial if it does not cause any prejudice to the accused.

17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section

42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the

information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001".

23. In the decision in case of ***Vijaysinh Chandubha Jadeja vs. State of Gujarat reported in 2011(1) SCC 609,*** the Hon'ble Apex Court has held as under:-

"18.Although the Constitution Bench did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory

or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted 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. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

19.As noted above, sub-sections (5) and (6) were inserted in Section 50 by Act 9 of 2001. It is pertinent to note that although by the insertion of the said two sub-sections, the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned in the sub- sections, viz. when the authorised officer has reason to believe that any delay in search of the person is fraught with the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance etc., or article or document, he may proceed to search the person instead of taking him to the nearest gazetted officer or Magistrate. However, even in such cases a safeguard against any arbitrary use of power has been provided under sub-section (6). Under the said sub-section, the empowered officer is obliged to send a copy of the reasons, so recorded, to his immediate official superior within seventy two hours of the search. In our opinion, the insertion of these two sub-sections does not obliterates the mandate of sub-section (1) of Section 50 to inform the person, to be searched, of his right to be taken before a gazetted officer or a Magistrate. The object and the effect of insertion of sub-sections (5) and (6) were considered by a Constitution Bench of this Court, of which one of us (D.K. Jain, J.) was a member, in Karnail Singh Vs. State of Haryana13. Although in the said decision the Court did observe that by virtue of insertion of sub-sections (5) and (6), the mandate given in Baldev Singh's case (supra) is diluted but the Court also opined that it cannot be said that by the said insertion, the protection or safeguards given to the suspect have been taken away completely. The Court observed :-

"Through this amendment the strict procedural requirement as mandated by Baldev Singh case was avoided as relaxation and fixing of the reasonable time to send the record to the superior official as well as exercise of Section 100 CrPC was included by the legislature. The effect conferred upon the previously mandated strict compliance with Section 50 by Baldev Singh case was that the procedural requirements which may have handicapped an emergency requirement of search and seizure and give the suspect a chance to escape were made directory based on the reasonableness of such emergency situation. Though it cannot be said that the protection or safeguard given to the suspects have been taken away completely but certain flexibility in the procedural norms were adopted only (2009) 8 SCC 539 to balance an urgent situation. As a consequence the mandate given in Baldev Singh case is diluted."

22.In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision. As observed in Re Presidential Poll14, it is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of (1974) 2 SCC 33 the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

24. In the decision in case of ***State of Himachal Pradesh vs. Surat Singh reported in 2026 (0) AIJEL SC 76708*** the Hon'ble Apex Court has held as under:-

"18. Their lordships of the Hon'ble Supreme Court in the case of Suresh and others versus State of Madhya Pradesh, reported in (2013) 1 SCC 550, have held that in a case where the accused were merely asked whether they would offer their personal search to police officer concerned or to gazetted officer and the appellants gave their consent for their personal search by police officer concerned, it will amount to non-compliance of Section 50(1) of the ND & PS Act. Their lordships have held as follows:

"*16) The above Panchnama indicates that the appellants were merely asked to give their consent for search by the police party and not apprised of their legal right provided under Section 50 of the NDPS Act to refuse/to allow the police party to take their search and opt for being searched before the Gazetted officer or by the Magistrate. In other words, a reading of the Panchnama makes it clear that the appellants were not apprised about their right to be searched before a gazetted officer or a Magistrate but consent was sought for their personal search. Merely asking them as to whether they would offer their personal search to him, i.e. the police officer or to gazetted officer may not satisfy the protection afforded under Section 50 of the NDPS Act as interpreted in Baldev singh's case.*

17. Further a reading of the judgments of the trial Court and the High Court also show that in the presence of Panchas, the SHO merely asked all the three appellants for their search by him and they simply agreed. This is reflected in the Panchnama. Though in Baldev Singh's case, this Court has not expressed any opinion as to whether the provisions of Section 50 are mandatory or directory but "failure to inform" the person concerned of his right as emanating from sub-section (1) of Section 50 may render the recovery of the contraband

suspect and the conviction and sentence of an accused bad and unsustainable in law. In Vijaysinh Chan Jadeja's case (supra), recently the Constitution Bench has explained the mandate provided under sub-section (1) of Section 50 and concluded that it is mandatory and requires strict compliance. The Bench also held that failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. The concept of substantial compliance as noted in Joseph Fernadez (supra) and Prabha Shankar Dubey (supra) were not acceptable by the Constitution Bench in Vijaysinh Chandubha Jadeja, accordingly, in view of the language as evident from the panchnama which we have quoted earlier, we hold that, in the case on hand, the search and seizure of the suspect from the person of the appellants is bad and conviction is unsustainable in law."

18. Their lordships of the Hon'ble Supreme Court in case of State of Rajasthan versus Parmanand and another, reported in (2014) 5 SCC 345, have held that if merely a bag is carried by person is searched without there being any search of his person, S. 50 will have no application but if bag carried by him is searched and his person is also searched, S. 50 would be attracted. Their lordships have also held that it was improper for PW-10 S.I. "Q" to tell respondents that a third alternative was available. It has been held as follows:

15. "Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

25. It is also worthwhile to refer the decision of the Hon'ble Apex Court in case of ***State of Rajasthan vs. Jag Raj Singh reported in 2016 (11) SCC 687 and in the case of Boota Singh vs. State of Haryana reported in 2021 (19) SCC 606*** whereby in similar set of facts the Hon'ble Apex Court has deal with Sections 42, 43 and 50 of

the NDPS Act.

26. Thus, the basic requirement under Section 50 of the Act was also not complied with in the present case at the time of conducting the search of the present respondents in the presence of the panch witnesses. There is no evidence on record to establish that the accused was informed of their right to have their search conducted in the presence of a Gazetted Officer or a Magistrate, as required under the said provision. From the evidence of none of the witnesses does it emerge that the mandatory requirement under Section 50 of the NDPS Act was duly complied with. Mere denial by the present respondent cannot dispense with the statutory requirement. The concerned authority was required to inform the respondents of their legal right and, if they so desired, to produce them before the nearest Gazetted Officer or Magistrate, as observed by the Hon'ble Apex Court in the decisions referred to hereinabove.

27. Even prima facie on perusal of the panchnama of the seizure of Mudammal and the report of the chemical analyzer also creates a doubt that whether the actually it was a ganja or not as it is provided under the provision of Section 2 (3)(iv) of the NDPS Act, which reads as under:-

> *“2. (iii) “cannabis (hemp)” means—*
>
> *(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;*
>
> *(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and*

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom; (iv) "cannabis plant" means any plant of the genus cannabis;

(iv) "cannabis plant" means any plant of the genus cannabis"

28. In view of the aforesaid circumstances, the Trial Court recorded a finding that the prosecution had failed to establish the basic ingredients of the offence against the present respondents. After considering the evidence on record and relying upon the decisions referred to in the impugned judgment, the Trial Court recorded cogent reasons and ultimately passed the impugned judgment and order of acquittal. Even, the Trial Court has observed that the prosecution has not complied with the mandatory provisions namely Sections 42(1)(2), 50, 55 and 57 of the NDPS Act and after referring the decision of the Hon'ble Apex Court and the Hon'ble other High Courts referred to in paragraph Nos.32 and 33 has rightly passed the impugned judgment and order of acquittal.

29. So far as the evidence of P.W.3 along with P.W.1 and P.W.4 is concerned, it appears that though P.W.1 and P.W.4 being the raiding officers, however, they have not complied with the provision of Section 50(1) of the Act as they have not brought the accused before the Gazetted Officer i.e. Executive Magistrate or Judicial Magistrate. Even the the Police Station is hardly five minutes away from the raiding sport, however, they were reaching at the place only after almost four hours and recorded the FIR and, therefore, the evidence of the prosecution witnesses creates serious doubt. It appears from the record that the prosecution has examined the husband of accused No.2, who denied the relationship with accused No.2. Under the circumstances, the Trial Court has, after considering the evidence of

the prosecution witnesses, discussed the evidence of the witnesses and recorded the discrepancies found in the evidence of the witnesses and from their evidence, the guilty of the accused is not proved by the prosecution beyond reasonable doubt and come to the conclusion in paras – 31 onward.

30. Further, on perusal of the record of the appeal, it transpires that the respondents-accused have established their innocence before the Trial Court and that, after due appreciation of the oral as well as documentary evidence and other material placed on record, the Trial Court has rightly passed the impugned judgment and order of acquittal. The findings recorded by the Trial Court are just, proper and in accordance with the settled principles of law and, therefore, no interference is warranted by this Court.

31. It is well settled by catena of decisions that the Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, 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 is available to them under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

32. Further, 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. Further, while

exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

33. The scope and principles are enunciated by the Hon'ble Apex Court in case of ***Chandrappa and others Vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, more particularly ***paragraph Nos. 42 and 43***, which was subsequently re-affirmed by the Hon'ble Apex Court ***Rajesh Prasad Vs. State of Bihar and another***, reported in ***[2022] 3 SCC 471***, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in ***paragraph No. 26*** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149,*** the Hon'ble Apex Court has dealt with the similar issue, more

particularly, in ***paragraph Nos. 37 to 40.*** Hence, I am in complete agreement with the findings recorded by the trial Court.

34. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of ***Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169***, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

> *"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:*
>
> *"42. .... (1) An appellate court has full power to review, reappreciate 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 emphasize 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 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.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

35. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

36. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused

beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

37. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the Trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VIJAYKUMAR RAMESHBHAI PANCHAL(HC00171), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/10/2026 13:45:14