

IN THE COURT OF THE SPECIAL JUDGE :: :: TINSUKIA

Present: **Sri C. Das,**
Special Judge,
Tinsukia

Date of Judgment :- 20.05.2022

NDPS Case No. 03 (T) of 2018
U/s.18(c) of NDPS Act

(FIR No.3522/2018 of Digboi Excise)

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	A.K. CHOUBEY, Ld. P.P., TINSUKIA
ACCUSED	SRI RAJU RAI, S/o Late Budhiman Rai, R/o Dhekiajan Gaon, P.S. Digboi, Dist. Tinsukia (Assam)
REPRESENTED BY	ADVOCATE, SRI M.K. SINGH

Date of Offence	26.03.2018
Date of FIR	26.03.2018
Date of Charge Sheet	26.04.2018
Date of Framing of Charges	27.11.2018

Date of commencement of evidence	15.07.2019, 07.09.19 & 10.12.2020
Date on which judgment is reserved	NA
Date of Judgment	20.05.2022
Date of its Sentencing Order, if any	NA

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.PC
1	Sri Raju Rai	26.03.2018	10.05.2018	u/s.18 (c) of NDPS Act	—		45 days

J U D G M E N T

1. The prosecution case briefly can be stated that on 26.3.2018, Inspector of Excise, Tinsukia, Sri Priya Mahanta, who was also, In-charge of Digboi Excise office, had received a secret information to the effect that the accused Raju Rai was involved in selling opium. Therefore, on that day, in the wee hours, he along with Assistant Inspector; Sri Bipul Karmakar and their armed constables, started to proceed to Digboi. On reaching Digboi, they picked up Assistant Inspector; Sri Kanai Konwar and 4/5 constables. Thereafter, they reached Margherita. There also, they picked up one Assistant Inspector. They reached the house of the accused on that day. Sri Priya Mahanta knew the accused Raju Rai since the days, when he worked at Digboi office. Since then, he had the knowledge that the accused was involved in selling of opium. Therefore, he knew the residence of accused Raju Rai. At about 5 A.M., they reached the house of accused Raju Rai at Dhekiajan. They surrounded the house of accused. They brought village Gaonbura with them. At that time, the accused was sleeping inside his house. Hence, the Gaonbura called the accused and accordingly, the accused came out of his house. After completing all the necessary formalities, they entered into the house of the accused and searched the house. On search, they found a

packet, which was wrapped in polythene, which was found within one hollow leg of a table and they found that the said packet contained opium. On being asked, the accused told them that he had procured the said opium from a person, named Sri Siju Chetry of Pengeree. On weighting of opium, it came to be about 71 grams and accordingly, seized the same in presence of witnesses and prepared the seizure list. After completion of investigation and having found prima-facie materials, the offence report/charge-sheet was submitted against the aforesaid accused **u/s.18(a) of Narcotic Drugs & Psychotropic Substances Act** (in short; The NDPS Act).

2. During the trial, the accused entered his appearance before the Court. Immediately, he was furnished with relevant copy of the case. After hearing and perusing the materials on record, the charge was framed **u/s.18(c) of NDPS Act**. The charge which was framed, was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

3. In this case, prosecution examined four witnesses and the defence examined none. The plea of the defence is plea of denial as it appears from the statement of the accused recorded **u/s. 313 CrPC**. The argument of the parties was heard at length and perused the evidence on record.

4. **POINT FOR DETERMINATION:**

The only point for determination in this case is as to whether on 26.3.2018 at Dhekiajan Gaon under Digboi police station; the accused was found in possession of 71 grams of opium and thereby, committed an offence **u/s.18(c) of NDPS Act?**

DECISION AND REASONS THEREOF :

5. In this case, the prosecution examined Sri Thir Bahadur Chetry as PW1. He deposed in his evidence that on 26.3.2018, the Excise Inspector Sri Priya Mahanta along with his associates, came to the house of accused Raju Rai at about 5/6 A.M. At that time, he was sleeping in his house. He was called by the excise officials and accordingly, he came to the house of the accused. He called the accused to come out of the house. He was requested by the excise officials to search their bodies and accordingly, he searched the bodies of the excise officials. He brought out mobile phones and some papers from the possession of the excise officials. Thereafter, three officers entered into the house of accused Raju Rai and he also, accompanied them. Except Kanai Konwar, he did not know the names of other officers, who had entered into the house of accused Raju Rai. The accused Raju Rai was also, taken into the house. In his presence, the excise officials searched the house of accused

and found one packet below a table. Then, they opened the packet and saw that it contained some black materials. The excise officials told him that the said black material was nothing but opium. The excise officials seized the opium and he put his signature in the seizure list. Ext.1 is the seizure list and Ext.1(1) is his signature. The accused Raju Rai told the excise officials that the said opium was meant for his own consumption as he was suffering from certain ailments.

6. PW1 further stated that in his presence, the excise officials took weight of the seized opium, but he does not remember the weight of the said opium. M.Ext.1 is the said seized opium. The said opium was wrapped with a cloth and upon that, he had put his signature. M.Ext.2 is the said cloth and M.Ext.2(1) is his signature. The excise officials drew samples from the seized opium and the sample was separately packed. M.Ext.3 is the second packet of the sample, as the first packet was sent for chemical analysis. He put his signature over that second packet. M.Ext.3(1) is his signature. The excise officials recorded the statement of accused Raju Rai. By the said statement, accused Raju Rai admitted that he had possessed narcotic drugs. Ext.2 is the statement of the accused Raju Rai. He put his signature on the statement of accused Raju Rai vide Ext.2(1). The accused Raju Rai also, put his signature in the said statement. The excise officials had drawn a sketch map of

the place of occurrence vide Ext.3. He also, put his signature in the arrest memo vide Ext.4 and Ext.4(1) is his signature.

7. In cross-examination, PW1 stated that accused Raju Rai lived in his house along with his wife. One lady excise official had come to his house to call him to the house of accused Raju Rai. He did not make any statement before the excise officials as he has stated in the court. Out of the six officials, he had searched the bodies of only four excise officials. At the time of search of the house of the accused, the wife of the accused was inside the house. There are four rooms inside the house of the accused. After completing search, when excise officials were coming out of the house, they found the packet, containing opium by the side of the door inside the house. The body of the accused was not searched by anyone. The excise officials did not make inventory of the articles inside the house. The lady excise official also, entered into the house of the accused, but her body was not searched by anyone. The seal and signature over the Ext.1 was put in front of his house, which is situated in front of the house of the accused. The cloth in which the contraband article was wrapped, was taken from the house of the accused. The excise officials had brought with them a weighing scale and with it, they had taken the weight of the seized opium. The excise officials did not take

samples from the seized opium. On the polythene packet, containing the opium, does not have his seal and signature. When excise officials visited the house of the accused, no policeman was present there. He cannot say, who prepared the Ext.1. The accused was not informed about the consequences of making a confessional statement. The excise officials did not take the signature of the wife of the accused. The accused is a cultivator by profession and most of the day, he is involved in agricultural activities. He never heard that the accused was involved in selling opium, but he knew that the accused consumed opium. PW1 denied that the excise officials never seized opium from the house of the accused. Apparently, the evidence of PW1 is direct and present at the time of seizure of contraband drugs from the house of the accused. He is not excise official but a local person.

8. PW2 is Bipul Karmakar, who is the Assistant Inspector of Excise, Tinsukia. He deposed in his evidence that he knew Sri Priya Mahanta, who was the Excise Inspector of Tinsukia (Sadar) at the relevant time of occurrence. At the relevant time, he was working under Sri Priya Mahanta at Tinsukia (Sadar). Since the day of occurrence, he knew the accused Raju Rai. He knew Kanai Konwar and said Kanai Konwar is his colleague and posted at Digboi Excise office. On 26.3.2018, he along with Priya Mahanta, Smti. Lina

Dangoria Khanikar and some police personnel had gone to the place of occurrence at about 4 A.M. In the mean time, Kanai Konwar was waiting for them at Digboi and on arrival at Digboi, they assembled together and went to the house of accused Raju Rai at Dhekiajan Gaon. They also, called the village Gaonbura Thir Bahadur Chetry(PW1). Sri Priya Mahanta had asked accused Raju Rai, if he would like to have the presence of Magistrate at the time of search of his house. The accused Raju Rai informed Sri Priya Mahanta that without a Magistrate, his house can be searched. The Gaonbura; Sri Thir Bahadur Chetry(PW1) had searched the body of Sri Priya Mahanta, him and Kanai Konwar. After that, they entered into the house of accused Raju Rai along with the Gaonbura(PW1). They searched the house of accused Raju Rai and in presence of accused Raju Rai, they discovered a packet, containing narcotic drug below a table on the house. Sri Priya Mahanta had prepared a seizure list vide Ext.1 and Ext.1(2) is his signature. Sri Kanai Konwar also, put his signature on Ext.1. The accused also, put his signature on the said seizure list. They carried a weighing scale with them and with that, they took weight of the seized opium and it came to be 71 grams. They had drawn two samples containing, five grams each. M.Ext.3 is the second sample packet. Upon the said packet, Sri Priya Mahanta, accused Raju Rai and the Gaonbura(PW1) had put their signatures. He prepared a sketch map of the place of

occurrence, but he did not put his signature in the said sketch map. They took the accused into their custody. He recorded the statement of the accused Raju Rai vide Ext.2 and Ext.2(2) is his signature. Sri Priya Mahanta and the Gaonbura; Sri Thir Bahadur Chetry(PW1) also, put their signatures in Ext.2. The accused also, put his signature in Ext.2. The seized narcotic drug was wrapped with a cloth in his presence and over the said cloth, Sri Priya Mahanta, Gaonbura(PW1) and the accused put their signatures. Thereafter, they brought the accused to their office at Tinsukia.

9. In cross-examination, PW2 stated that Inspector Sri Priya Mahanta was the inquiry officer of this case. In the present case, Sri Priya Mahanta never recorded his statement. There was one house, adjacent to the house of the accused and they called the owner of that house to the house of the accused, but said person did not come to the house of the accused. When they searched the house of the accused, the wife of accused was present inside the house. They did not make any inventory of the articles of the house of the accused. There is nothing in Ext.1 to the effect that seizure was made in presence of the accused. Except the Gaonbura(PW1), they could not procure any independent witnesses. The fact that the accused agreed to the search, without the presence of Magistrate, has not been mentioned

in Ext.1. In Ext.2, it is not reflected that the accused was warned of the consequences of the confessional statement. In Ext.2, it is not reflected as to in which language, the accused gave the statement. In presence of the accused and the witnesses, they had drawn samples from the seized narcotic drugs and after drawal of the sample, the remaining portion was packed-up. They had taken a piece of cloth with them for wrapping the narcotic drugs. On that day, Sri Priya Mahanta did not take his official seal with him, but in some documents of this case, the seal of Sri Priya Mahanta are appearing. Ext.1 and 2 are the documents, where the seal of Sri Priya Mahanta is visible. He denied that they never seized anything from the house of the accused and they falsely implicated the accused in this case. Thus, the evidence of PW2 is direct and corroborates the version of PW1.

10. PW3 is Sri Kanai Konwar, who is an official of excise department. He deposed that on 26.3.2018, he was working at Digboi as Assistant Inspector of Excise. On the previous day, Sri Priya Mahanta, the Excise Inspector of Tinsukia (Sadar) told him that on the next day i.e. on 26.3.2018, Sri Priya Mahanta will be coming to Digboi and asked him to be ready to go with Priya Mahanta to somewhere. At about 4.15 A.M. in the morning of 26.3.2018, Sri Priya Mahanta accompanied by Bipul Karmakar(PW2), the Assistant Inspector of Excise and some armed constables, in total

about 15/20 persons, came with Sri Priya Mahanta. Said Sri Priya Mahanta picked him up and they all were in three vehicles, went to Dhekiajan Gaon. They straightway went to the house of the accused Raju Rai. At that time, it was about 4.45 A.M. They surrounded the house of the accused. Their constables brought the village Gaonbura(PW1). They informed the Gaonbura(PW1) that the accused Raju Rai was involved in selling the opium and they had come there to search the house of the accused. Gaonbura(PW1) searched his body and the bodies of Bipul Karmakar(PW2) and Sri Priya Mahanta. At that time, Assistant Inspector of Excise; Smti Lina Khanikar Dangoria was also, with them, but her body was not searched by the Gaonbura(PW1). After that, he along with Smti. Lina Khanikar Dangoria, Sri Priya Mahanta and Sri Bipul Karmakar(PW2) entered into the house of the accused. They informed accused Raju Rai that they will be searching the house of accused. During search, the wife of the accused brought out a pouch from beneath a table and handed it over to them. On opening the pouch, they found opium therein. The accused also, admitted that he kept the opium for his own consumption. They took weight of the seized opium and found that it was 71 grams. They took two samples from the seized opium. He does not remember the weight of the samples. Ext.1 is the seizure list and Ext.1(3) is his signature. They arrested the accused.

11. In cross-examination, PW3 stated that Sri Priya Mahanta is the inquiry officer. The inquiry officer did not record his statement. The pouch that was handed over to them by the wife of the accused can be carried in a pant-pocket. When the Gaonbura(PW1) searched their bodies, he did not find anything from their possession. Before the body search, they handed over possessions to a constable. The consent of the accused for search of his house was taken, but it was not taken in writing. They did not prepare any inventory of the articles, which were there inside the house of the accused. They did not record the statement of the wife of the accused, nor they arrested her, nor they made her a witness in this case. The statement of the accused was recorded by Sri Priya Mahanta in presence of him. The accused was given the warning about the consequences of what would be telling before the inquiry officer and after that, the statement of accused was recorded. In the arrest memo, the excise case number has been mentioned, but the section of law has not been mentioned. There are 20 houses around the house of the accused, but they did not call any of those people to be witness for the seizure of opium. He denied that they never recovered any opium from the house of the accused and they forcefully took signatures of the accused in some documents and that the accused never made any statement before them.

12. During trial, PW3 Sri Kanai Konwar was re-examined to prove the offence report and chemical examination report. PW3 in his re-examination deposed that after receipt of the case record, he collected the chemical examination report from the Chemical Examiner, Excise Department, Assam vide M.Ext.1. He has gone through the M.Ext.1 and after perusing the entire materials on record, he filed the offence report against the accused Raju Rai u/s.18(a) of the NDPS Act vide Ext.5 and Ext.5(1) is his signature.

13. During cross-examination, PW3 stated that it is not mentioned in Ext.5 that two samples of narcotic drugs were drawn without presence of any Magistrate. It is not mentioned in Ext.5 that who searched the body of the woman constable during raid. He has not submitted the seized materials with Ext.5. He was not authorized by any officer to file the Ext.5. Since he was the In-charge, he filed the Ext.5. He denied that he has not lawfully filed the Ext.5. Thus, it appears that the evidence of PW3 corroborates the testimony of PW1 and 2.

14. PW4 is Sri Priya Mahanta, a retired Inspector of Excise, Tinsukia. He deposed *inter-alias* that on 26.3.2018, he was working as Inspector of Excise, Tinsukia and he was In-charge of their office at Digboi as well. They had some specific information that the accused Raju Rai was involved

in selling opium. Therefore, on that day, in the wee hours, he along with Assistant Inspector Sri Bipul Karmakar(PW2) and their armed constables, started their journey to Digboi. At about 4.30 A.M., they reached Digboi. On reaching Digboi, they picked-up Assistant Inspector Kanai Konwar(PW3) and about 4/5 constables. Thereafter, they reached Margherita. There also, they picked-up one Assistant Inspector. In total, 24/25 persons had reached the house of the accused on that day. He knew accused Raju Rai since the days, when he worked at Digboi. Since then, he had the knowledge that the accused was involved in selling of opium. Therefore, he knew where accused Raju Rai resided. At about 5 A.M., they reached the house of accused Raju Rai at Dhekiajan. They surrounded the house of the accused. They also, brought in village Gaonbura(PW1). At that time, the accused was sleeping in his house. Therefore, they engaged village Gaonbura(PW1) to call the accused. At that time, accused Raju Rai, his wife and his brother resided in the said house. On being called by the Gaonbura(PW1), the accused Raju Rai came out of the house. They told the accused that they will be searching his house for recovery of narcotic drugs. The accused allowed them to search his house and therefore, they asked the village Gaonbura(PW1) to search their bodies. The Gaonbura(PW1) searched his body along with the bodies of Bipul Karmakar(PW2) and Kanai Konwar(PW3). The Gaonbura(PW1) also searched the

bodies of two constables, Robin Dhan and Bablu Baruah. About six persons, including him and one lady constable; Bhonita Moran entered into the house of the accused. On search, they found one foldable plastic table, having round hollow legs. When they picked-up the table, they found that within one hollow leg of that table, there was a packet, which was wrapped in polythene. They found that the aforesaid packet contained opium. The accused told them that said opium was meant for his own consumption. The accused also, told them that he had procured the said opium from a person, named; Siju Chetry of Pengeree. They took weight of the opium and it came to be about 71 grams. They had drawn two samples each containing, five grams. They prepared a seizure list. He also, gave signatures with the Gaonbura(PW1) and the accused on the packets containing samples. Ext.1 is the seizure list and Ext.1(4) is his signature. The accused had put his signature in the seizure list in his presence. M.Ext.3 is the second sample of the seized opium. He along with the Gaonbura(PW1) had put their signatures in the sample packet. The accused Raju Rai also put his signature in the sample packet. He had recorded the statement of the accused through Bipul Karmakar(PW2). The accused put his signature in the said statement in his presence. Ext.2 is the said statement of the accused and Ext.2(3) is his signature and Ext.2(4) is the signature of the accused, which was made in his presence. Assistant

Inspector Bipul Karmakar(PW2) had prepared a sketch map of the place of occurrence, where he had put his signature. The accused and the Gaonbura(PW1) also, put their signatures in the said sketch map. Ext.3 is the sketch map and Ext.3(2) is his signature. They arrested the accused. He sent the sample of the seized opium for chemical examination.

15. In cross-examination, PW4 stated that he was authorized by their Superintendent Sri Himan Jyoti Bora to investigate the case. In the entire case record, there is no mention about the verbal instruction, given to him by Superintendent; Himan Jyoti Bora. They did not record statement of any witness in this case. Nobody prevented them from recording statements of witnesses. They never received any formal complaint from anyone about the activities of accused Raju Rai. Prior to this case, on one occasion, accused Raju Rai was arrested by their department, but he does not remember the case number. Six persons, including one woman had entered into the house of the accused and except the woman, the bodies of the male persons were searched by the Gaonbura(PW1). There were 10/12 other houses near the house of the accused, but they did not call anyone from those houses to be witness of their body search. At the time of their body search, no envelope, no pen, no paper, no weighing scale,

no seals, no piece of clothes were found from their possession, because those goods were kept in their vehicle. At the time of search of the house of the accused, Lina Khanikar Dangoria was not present. At the time of search, he along with the constable; Bhonita Moran had recovered the opium from inside the hollow leg of the table. They did not prepare any inventory of articles inside the house of the accused. In this case, the wife and brother of the accused have not been made witness. Before his retirement on 31.3.2018, he entrusted Kanai Konwar(PW3) to investigate the case, but it is not mentioned in the case record. In this case, they did not try to arrest Siju Chetry. The value of seized contraband was assessed as per his own assumption.

16. It appears from the evidence of PW4 that he received secret information of the accused for having in his possession of narcotic drugs illegally. He is an Inspector of Excise department. The evidence of PW4 discloses that he was authorized by his superior officer like; Superintendent of Excise department to go for search operation at the house of the accused. But PW4 being an Inspector of Excise department, has not reduced to writing the said secret information so received by him and sent a copy thereof to his superior officer immediately as required **u/s 42 of NDPS Act**. Thus, it means that PW4 reported the secret information so received by him, to his superior officer

verbally and accordingly, it seems that PW4 was empowered by his superior officer to conduct search operation. Hence, there was lapse of PW4 to record the secret information in writing before reporting it to his superior officer. On the other hand, there is lapse of superior officer of PW4 to order in writing to authorize to conduct search operation in the house of the accused.

17. In the case of **Karnail Singh vs. State of Haryana (2009) 2 SCC 539**, it was held that *In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of Section 41(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 register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) 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 Section 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 with requirements of sub-section (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with 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 of a copy 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.

18. Similarly, in **2010 (3) GLT 454 Sh. F. Vanlalringa vs. State of Mizoram**, it was held that *We are also of the considered view that the statutory provisions and procedural safeguards as provided to the accused-appellant under ND and PS Act in reference to the Section 42(1), 42(2) and 57 of the NDPS Act have not been complied with properly. Nothing has been revealed that PW4 the investigating officer the person who registered the FIR and who apprehended the accused and seized the suspected article/ material has after receiving the information has put the same into writing and has sent the same to the superior officer. Nothing is also divulged that even after seizure and arrest any information was ever given to the superior official. The mandatory*

requirements of Sections 42(2) and 57 of NDPS Act since have not been complied with, therefore, the prosecution case itself on this point alone cannot be said to be legally sustainable. Apart from these, there is apparent contradiction in the testimonies of PW1 and PW2 in respect of claim by the accused- appellant about identification of the seized article. In the facts and circumstances the testimonies of the two defence witnesses, DW1 and DW2 have been ignored as both of them have coherently indicated that the accused-appellant was taken out from the bus and was beaten by the Darlawn people and the police and was taken to a house and due to assault his face was swollen and one tooth had blown off and due to assault and under fear the accused-appellant had stated that the seized article was belonging to him.

19. Thus, the above decisions show different situations without any rigidity to comply the provisions u/s 42 of NDPS Act as well as, consequences of lapses of mandatory provisions of Act. However, in the present case, it appears that PW4 created a search team comprising; PW2, PW3 and himself to go for search at the house of the accused. The team picked up PW1 on the midway as independent witnesses. The search action of PW4 initiated in the early morning. So, PW4 had sufficient time to record the information so received by him secretly into writing and to

send a copy of such information to his superior officer immediately before taking action. There is no evidence that after return from search operation, PW4 reported the same to his superior officer and the same was reduced to writing. Hence, PW4 did not comply statutory provisions u/s 42 of NDPS Act and that is serious lapse on the part of PW4 for which the accused is entitled to get benefit thereof. However, PW4 discloses that he was authorized by Superintendent of Excise to investigate the case but no such official document is produced or proved in the case. Hence, there is doubt if PW4 was authorized by superior official to take charge of investigation or search operation.

20. Besides, it does not appear in the evidence on record that PW4 complied with the provisions u/s 57 of NDPS Act, which again shows lapse of compliance of relevant provisions of law. Since there is no evidence on record to show that personal body of the accused was searched by Excise officials, compliance of provisions u/s 50 of NDPS Act does not arise. The same has been reiterated in **(2011) 11 SCC 559; State of Rajasthan vs. Tara Singh.**

21. Herein, PW1 being a local gaonbura, is the independent witness of the prosecution. He however, narrated the searching of bodies of members of search team before entry into the house of the accused. However, it does

not appear who searched the personal body of lady excise official namely; Bhonita Moran who along with PW3 and PW4, entered into the house of the accused. In any way absence of her body search though others male officials body was duly searched, would not create any doubt since nothing has been shown adversely that she was alone entered the house of the accused. It is not mandatory under law to obtain consent of the accused before search of his house.

22. PW1 supported PW4 and PW2 and PW3 in regard to the seizure of opium from the house of the accused, kept under a table, after searching by excise officials vide Ext.1. Thus, seizure of opium from the possession of the accused established. But after taking the weight of the opium vide M. Ext.1 which came to 71 grams, PW4 prepared the samples thereof without presence of a Magistrate in compliance of **Section 52-A** of the Act which again shows non-compliance of the provisions of law. Moreover, there is no evidence that any inventory of seized article was prepared by PW4. Hence, it is another case of non-compliance of the statutory provisions of law by the prosecution, which is fatal to it.

23. In **AIR 1994 SC 117 Valsala vs. State of Kerala**, it was held that *Suffice it to say that the article seized appears to have been not kept in proper custody and proper form so*

that the court can be sure that what was seized only was sent to the chemical examiner. There is a big gap and an important missing link. In the mahazar Ex. P. 2 which is immediately said to have been prepared, there is nothing mentioned as to under whose custody it was kept after seizure. Unfortunately, for the prosecution even PW6 does not say that he continued to keep it in his custody under seal till it was produced in the court.

24. In **Tara Singh case** (supra), it was also, held that *We must emphasis that in a prosecution relating to the Act the question as to how and where the samples had been stored or as to when they had been dispatched or received in the laboratory is a matter of great importance on account of the huge penalty involved in these matters.*

25. In the instant case as senior team official of excise officials, PW4 did not adduce evidence as regards to safe custody of seized drugs before it produced in the court or sent for chemical examination. Thus, in absence of such evidence as regards to custody of seized article, it cannot be held that the prosecution is able to prove the fact that seized article was kept in proper custody and as such, it creates doubt over it. In view of above, the accused is given the benefit of doubt.

26. Under the above facts and circumstances of the case, the prosecution has not able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty **u/s 18(c)** of NDPS Act. The accused is acquitted and set at liberty. His bail bond shall however, remain in force u/s 437A CrPC. The seized article including its samples shall be destroyed in due course. Forward a copy of judgment to the District Magistrate, Tinsukia u/s 365 CrPC.

27. Given under the hand and seal of this Court on this the 20th day of May, 2022.

Dictated & corrected by me:

Special Judge
Tinsukia

(C. Das)
Special Judge
Tinsukia

A P P E N D I X

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Sri Thir Bahadur Chetry	Gaonbura - Direct
PW2	Sri Bipul Karmakar	Official – Direct
PW3	Sri Kanai Konwar	Official - Direct
PW4	Sri Priya Mahanta	Official - Direct

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	NA	NA

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	NA	NA

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Seizure list

2	Exhibit 2	Statement of the accused
3	Exhibit 3	Sketch map
4	Exhibit 4	Arrest memo
5	Exhibit 5	Offence Report

B. Defence:

Sr. No.	Exhibit Number	Description
NA	NA	NA

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NA	NA	NA

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	MO1	Seized opium
2	MO2	Cloth
3	MO3	Second packet of sample
4	Another MO1	Chemical Examination Report

Special Judge
Tinsukia

