



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 23.02.2026

Judgment pronounced on: 27.02.2026

+ **CRL.A. 499/2018**

DHARAMBIR THAKUR & ANR.

.....Appellant

Through: Mr. Sudhansu Palo, Advocate with Mr.
Surinder Roy, Mr. Rajesh Palo and Mr.
Mihir Kumar Jena, Advocates

versus

THE STATE (GOVT. OF NCT OF DELHI)Respondent

Through: Mr. Utkarsh, APP for the State.

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) Cr.P.C., the accused persons, two in number, in Sessions Case No.2050/2016 on the file of the Additional Sessions Judge-04 and Special Judge (NDPS), South-East District, Saket Courts, Delhi, challenge the judgement dated 27.02.2018 and order on sentence dated 28.02.2018, as per which they have been convicted and sentenced for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).



2. The prosecution case is that on 24.07.2012 at 10:30 P.M., both the accused persons were found in possession of 201 Kilograms of *ganja* in front of Suraj Apartment, Main Road, Suraj Kund-Prahladpur Road in a three wheeler bearing no. HR-38-T-2626, which was driven by accused no.1(A1) and accused no. 2(A2) was sitting in the same with the bags containing *ganja*. Hence, as per the chargesheet/final report dated 08.12.2015, the accused persons are alleged to have committed the offence punishable under Sections 20, 25 and 29 of the NDPS Act.

3. On appearance of the accused persons before the trial court, copies of all the prosecution documents were supplied to them in compliance with Section 207 Cr.P.C. On 13.01.2016, Charge under Section 20 of the NDPS Act was framed against the accused persons, which was read over and explained to them, to which they pleaded not guilty.

4. In order to prove the case, the prosecution examined PWs. 1 to 12 and Exhibits PW1/A, PW2/A-H, PW4/A-B, PW5/A-



C, PW6/A-B, PW7/A, PW8/A, PW9/A-C, PW11/A-C, P1-P4 and Mark N1, N2 and X were marked.

5. After the close of the prosecution evidence, the accused persons was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the prosecution evidence. Both the accused persons denied all those circumstances and maintained their innocence and stated that they had been falsely implicated.

6. After questioning the accused persons under Section 313(1)(b) Cr.P.C, compliance of Section 232 Cr.P.C was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C is seen made by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3)KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused persons have no case that



2026:DHC:1723



non-compliance of Section 232 Cr.P.C has caused any prejudice to them.

7. No oral or documentary evidence were adduced by the accused persons.

8. The trial court, after hearing both sides and on a consideration of the oral and documentary evidence, *vide* judgment dated 27.02.2018 convicted both the accused persons for the offence punishable under Section 20 of the NDPS Act and *vide* order on sentence dated 28.02.2018 sentenced both the accused persons to undergo rigorous imprisonment for 10 years along with fine of ₹1,00,000/- each, and in default of payment of fine, to undergo simple imprisonment for one year each. Aggrieved, the accused persons have preferred this appeal.

9. It was submitted by learned counsel for the appellants that the impugned judgment suffered from serious infirmities as the prosecution case was fraught with material contradictions and inconsistencies which went to the root of the matter. It was



2026:DHC:1723



contended that the testimony of the witnesses regarding receipt of secret information, constitution of the raiding party, the vehicles used, the manner of apprehension, and the sequence of events is not consistent. Particular emphasis was laid on the fact that DD No. 2 reflected apprehension of only one person, whereas the prosecution case was that both the appellants/accused persons were apprehended together. These discrepancies, it was argued, rendered the prosecution version doubtful and the conviction unsustainable, especially in a case under the NDPS Act where strict scrutiny of evidence is required.

9.1. It was further submitted that the prosecution had failed to associate any independent witness despite availability. The alleged recovery took place at a public place, yet no public person was joined in the proceedings and no satisfactory explanation has been offered for such omission. Even the driver of the Innova vehicle, who is alleged to have taken the raiding party to the spot, was never examined. Likewise, although the ownership documents



of the auto rickshaw from which the contraband is alleged to have been seized were placed on record in the name of one Pawan Kumar, the said person was not examined. The non-examination of these material witnesses create serious doubt regarding the fairness of the investigation and the authenticity of the alleged recovery, argued the learned counsel.

9.2. The learned counsel also submitted that there has been non-compliance of the mandatory provisions of Sections 42 and 50 of the NDPS Act. The search was conducted after sunset without proper recording of reasons demonstrating inability to obtain a warrant or authorisation, thereby violating Section 42 of the NDPS Act. Further, the alleged compliance of Section 50 of the NDPS Act was stated to be mechanical, particularly when the appellants were said to be illiterate and the refusal was recorded by the investigating officer himself without independent attestation. It was argued that it was the bounden duty of the investigating agency to conduct the search in the presence of a Gazetted Officer



or Magistrate in a fair and transparent manner, and that such perfunctory compliance defeated the statutory safeguards intended to protect the accused.

9.3. The learned counsel also contended that the prosecution had failed to establish complete and reliable link evidence. The entries relating to sample *pullandas*, seizure memo, FSL form and DD entries were alleged to be ante-dated, raising doubt about the sanctity of the chain of custody. It was specifically pointed out that the *pullandas* were allegedly sealed on 05.07.2015, whereas the samples were sent to the FSL only on 08.07.2015, and no satisfactory explanation for this delay is forthcoming. This delay, it was argued, cast serious doubt on the safe custody of the case property during the intervening period.

9.4. Lastly, it was submitted that even the trial court had recorded this aspect in paragraph 45 of the impugned judgment, yet proceeded to convict the appellants without properly addressing the consequence of the delay on the integrity of the



prosecution case. The defence plea that the appellants were falsely implicated and apprehended from elsewhere has not been properly considered by the trial court.

10. *Per contra*, the learned Additional Public Prosecutor, in response to the submissions advanced on behalf of the appellants, supported the impugned judgment and submitted that the conviction was based on cogent and consistent evidence. Referring to paragraph 35 of the impugned judgment, it was contended that due compliance of Section 50 of the NDPS Act stood proved through the testimonies of PW2, PW3 and PW5. Separate notices under Section 50 were served upon each accused and they were informed of their right to be searched before a Gazetted Officer or Magistrate. But they declined to exercise such right. Their replies bore their signatures, and the carbon copies (marked N1 and N2) were recovered during personal search and deposited in the *malkhana*. No suggestion disputing recovery or deposit of these



copies was put to PW9 or PW12, thereby establishing proper compliance.

10.1. It was further submitted that the recovery proceedings was duly proved and the evidence remained unshaken. The three seater rickshaw(TSR) was searched, seven plastic bags containing *ganja* were recovered, weighed and samples were drawn and sealed with the seal “OS” at the spot. The *rukka*, sealed parcels and FSL form were duly handed over to PW-3, who delivered them at the police station. The SHO affixed his seal “RK” before deposit in the *malkhana*, and the entries were made in Register No. 19. The witnesses corroborated each other on all material particulars and no material contradiction was elicited in cross-examination.

10.2. With regard to compliance of Sections 42 and 57 of the NDPS Act, it was submitted that the reports were duly prepared and forwarded to the superior officer, which stands corroborated by the testimony of PW6. It was further argued that, in any event, the recovery was effected from a public place, namely, a TSR at a



2026:DHC:1723



public road, and therefore Section 43 of the NDPS Act would apply, rendering the objection under Section 42 untenable. As regards the link evidence, it was submitted that the sealed sample parcels bearing the seals of “OS” and “RK” were sent to FSL Rohini through PW3 vide proper road certificate; entries were made in Register No. 19; the parcels were received at FSL in intact condition; and PW8 confirmed that the seals tallied and that the substance tested positive for *ganja*. There was no suggestion of tampering at any stage.

10.3. It was also submitted that there was no material contradiction in the testimony of PW1 regarding the report under Section 57. The photographs of the TSR were exhibited and not disputed. The plea that the appellants had been apprehended from elsewhere was never put to any prosecution witness nor specifically taken in their statements under Section 313 Cr.P.C., and therefore appears to be a mere afterthought. It was accordingly



2026:DHC:1723



urged that the prosecution had proved its case beyond reasonable doubt and the appeal deserves to be dismissed.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgement, calling for an interference by this Court

13. Before proceeding further, I shall briefly refer to the evidence on record. PW5, Sub-Inspector, South-East Region, Crime Branch Police Station deposed that on 05.07.2015 at about 8:30 PM, he received information that a person named Dharmbir, resident of Ballabhgarh, Haryana, would be arriving from the side of Faridabad carrying drugs and could be apprehended near Surajkund Road, Prahladpur. After making preliminary inquiries and satisfying himself about the credibility of the information, he conveyed the information to PW10 (Inspector, South Eastern Range, Crime Branch, New Delhi), who in turn informed the same to PW6 (ACP, ISC & SER, Crime Branch New Delhi) over phone,



2026:DHC:1723



whereupon directions were received from PW6 to conduct a raid. PW6 directed him to constitute a raiding party. He then reduced the secret information into writing *vide* DD No. 8 and handed over a copy thereof to PW10 in compliance of Section 42 of the NDPS Act. Thereafter, he constituted a raiding party comprising himself, PW3; PW2; Head Constables Sunil Gaur and Pradeep, Constables Rohit and Vinod. The raiding team left the Crime Branch office at about 9:30 PM in private vehicles after making a departure entry and reached near Suraj Apartments, Prahladpur at about 10:00 PM. According to PW5, he requested several persons, enroute, to join the raiding team, but none agreed.

13.1. PW5 further deposed that after taking positions near Suraj Apartments, a green coloured TSR bearing registration No. HR-38T-2626 was noticed coming from Surajkund side after about 15 to 20 minutes, as pointed out by the secret informer. The TSR stopped on the main road in front of Suraj Apartments, and its driver and another person alighted and began conversing while



waiting for someone. After waiting for about half an hour, when no one arrived, the raiding party apprehended both the persons. PW5 disclosed his identity and informed them that he had information regarding transportation of drugs in the TSR. He apprised both accused of their right to be searched in the presence of a gazetted officer or magistrate. Notice under Section 50 of the NDPS Act was served on both the persons, vide Exhibit PW2/A and Exhibit PW2/B. Since they stated that they were illiterate, PW5 read over the contents of the notice to them. Both of them declined to avail their rights. Their replies namely, Exhibit PW5/A and Exhibit PW5/B, were recorded on the notices and the same signed by them.. The said two persons disclosed their names as Dharmvir Thakur (A1) and Nizamuddin (A2). PW5 conducted their personal search, but nothing incriminating was recovered, and Exhibit PW2/C memo and Exhibit PW2/D memo were prepared.

13.2. PW5 further deposed that thereafter the TSR was searched and four yellow and three white plastic bags were found



2026:DHC:1723



inside. Upon opening, the bags were found to contain dry leaves and seeds emitting smell of *ganja*. Each bag was weighed separately: the first contained 28 kg, the second 31 kg, the third 32 kg, the fourth, fifth and sixth 30 kg each, and the seventh 20 kg, totalling 201 kg. Two samples of 250 grams each were drawn from each bag, placed in plastic polythene tied with rubber bands and converted into cloth parcels. The bags were marked Serial Nos. A to G, and the samples were marked A1, A2 to G1, G2. All parcels were sealed with the seal “OS”. The case property and samples were seized vide seizure memo Exhibit PW2/B. He filled up the FSL form and handed over the seal after use to PW2. He prepared the *rukka* and handed it over to PW3 along with the sealed sample *pulindas* and carbon copy of the seizure memo for registration of the FIR and for handing over the case property to the SHO. When PW9, Sub-Inspector reached the scene along with Prithvi Singh, Head Constable, he handed over both the accused persons and the case property to the former for further investigation. The site plan



2026:DHC:1723



was prepared at his instance vide Exhibit PW5/C. On the following day, he prepared the report under Section 57 of the NDPS Act and forwarded it through Inspector Pankaj Singh to ACP K.P.S. Malhotra (PW6). PW5 identified the case property, including the seven sealed sample parcels (Exhibit MO-1 to MO-7) and the seven plastic bags (Exhibit MO-8 to MO-14) which contained the contraband articles.

13.3. PW5, in his cross-examination, deposed that the informer met him for the first time and did not disclose the source of contraband, the recipient, the mode of transport, or the exact quantity. He further deposed that the IO kit, including the weighing machine, was his personal property and not issued by the department. The distance between his office and the spot was approximately 10–11 kilometres. He further deposed that private vehicles were used, including his own Wagon-R bearing registration No. DL-8CU-3217 and a hired Innova arranged by PW10, driven by a driver whose name he does not know. PW5



2026:DHC:1723



admitted that no photographs of the TSR were taken at the spot. He confirmed the presence of a CNG station near the scene but he was unable to say regarding the presence of a guard at the gate of Suraj Apartments round the clock or the presence of a priest in the temple situated adjacent to the gate of Suraj Apartments. PW5 was also unable to say whether there was a small market or an ATM inside the compound of the apartment complex. PW5 further deposed that the contraband was partly in loose form and partly in solid form and was weighed on an electronic machine. No handing over or taking over memo was prepared regarding his seal, which was returned to him by PW2 the following day. PW3 left the spot at about 01:30 AM with the *rukka* in the Innova car and did not return. PW5 denied the suggestions that no secret information was received, or that no raid had been conducted or, that nothing had been recovered from the accused, or that the case property was planted, or that the accused were apprehended from M/s Vijay



Spring Limited, Kelly Village, Palwal, Haryana, and falsely implicated.

14. PW1, Assistant Sub-Inspector, produced Exhibit PW1/A the report under Section 57 NDPS Act received in the office of ACP, Crime Branch, New Delhi, sent by PW 5 . PW1, in his cross examination, deposed that PW5 had come to the office to deliver Exhibit PW6/A report on 06.07.2015 at about 10A.M. He denied the suggestion that all the entries and documents produced by him are ante-time and ante-dated.

15. PW2 and PW3 who were members of the raid party supported the version of PW5.

16. PW4, Head Constable, Crime Branch, Police Station, Malviya Nagar deposed that on 06.07.2015, he was on duty as Duty Officer. At about 02:15 AM, Head Constable Jagpal (PW3) bought *rukka* sent by PW5, based on which he registered the crime, that is, Ext. PW4/B FIR. After registration of the crime, a



copy of the FIR along with the original *rukka* was given to PW3 for giving it to Sub-Inspector Vishal (PW9) for investigation.

17. PW6, the then ACP (ISC & SER), Crime Branch, Delhi, deposed that on 05.07.2015, he received telephonic information from PW10 regarding secret information obtaining about two persons transporting contraband. He directed PW10 to conduct a raid in accordance with law. He further deposed that on the following day, reports under Sections 57 and 42 of the NDPS Act were received in his office, i.e., Exhibit PW6/A and Exhibit PW6/B respectively.

17.1. PW6, in his cross-examination, denied the suggestion that the reports under Sections 42 and 57 of the NDPS Act were manipulated and that they were not received in his office on 06.07.2015.

18. PW7, the then SHO, Crime Branch Police Station, Malviya Nagar, New Delhi, deposed that on 06.07.2015 at about 2:20 AM, PW3 came to his office and produced 21 sealed



parcels duly sealed with the seal “OS”, along with a copy of the seizure memo relating to *ganja* and the original FSL Form for proceedings under Section 55 of the NDPS Act. He inquired about the FIR particulars and mentioned the same on all the parcels, the FSL Form and the copy of the seizure memo. He affixed his seal “RK” on all the aforesaid articles and signed the pullandas, the FSL Form and the seizure memo. Thereafter, he called the MHC(M), HC Jag Narain (PW12), and handed over the sealed parcels, FSL Form and seizure memo to the latter for deposit in the *malkhana*. Necessary entries were made in Register No. 19, which were also signed by him. He recorded DD No. 3 at about 2:55 AM in this regard, the copy of which is Ex. PW7/A. PW7 identified the case property, that is, Ex. MO-1 to MO-7 and MO-8 to MO-14.

19.PW8, Senior Scientific Officer (Chemistry), FSL, Rohini, deposed that on 09.07.2015, seven sealed parcels bearing the seals of “OS” and “RK” were assigned to him for chemical examination. He conducted the examination between 16.07.2015



2026:DHC:1723



and 27.07.2015 through various scientific tests and found that all the parcels contained *ganja* (cannabis) vide Exhibit PW8/A FSL Report. After examination, the parcels were resealed with the seal of “AY FSL DELHI”. The report was placed in a sealed cover and forwarded to the SHO, Crime Branch, Malviya Nagar. PW8, in his cross-examination, deposed that the contraband inside the parcels was in compressed form. He deposed that the parcel bags were intact, without any holes or tears, and were almost of similar size.

20. PW9, Sub-Inspector, Crime Branch, Police Station, Sunlight Colony, deposed regarding the formalities that were conducted during the raid. PW9, in his cross-examination, admitted that 2 to 3 persons were requested to join the investigation but none agreed. He did not call any resident or watchman of Suraj Apartments to join the proceedings. PW9 confirmed the presence of a temple near the spot but could not state about a priest residing there. PW9 also could not confirm the existence of a toll tax office nearby and stated that no toll receipt



2026:DHC:1723



was recovered from the accused or the TSR. PW9 deposed that the registered owner of the TSR is one Pawan Kumar, and that when he went to the address of the said person, one Chander Prakash informed him that Pawan Kumar had sold the property and had shifted to some other place. PW9 admitted that he had not recorded the statement of Chander Prakash or cited him as a witness. He denied the suggestions that he had not visited the scene or that the documents had been prepared at the instance of PW5 to falsely implicate the accused, or that the entries were ante-dated or ante-timed.

21. PW10 deposed that on 05.07.2015, while he was posted as Inspector, South Eastern Range, Crime Branch, New Delhi, at about 9:00 PM, PW5 came to his office along with a secret informer who shared a confidential information. He made inquiries from the secret informer and, upon being satisfied about the credibility of the information received, informed PW6 ACP over phone and on receiving directions from the ACP, instructed PW5



2026:DHC:1723



to conduct a raid in accordance with law. He further deposed that on the following day, PW9 produced both the accused persons before him.

21.1. PW10, in his cross-examination, deposed that the informer had not disclosed the source of contraband, the exact place from where the accused would bring the *ganja*, the mode of transport, the quantity of *ganja*, or the names and number of persons to whom the accused had supplied contraband in the past.

22. PW12, the then MHC(M) Crime Branch, Police station, Malviya Nagar, deposed that on 06.07.2015, the SHO, Crime Branch handed over to him sealed case property consisting of 14 cloth pullandas and 7 plastic *kattas* along with the FSL Form and copy of the seizure memo for deposit in the *malkhana*. The parcels were sealed with the seal of “OS” and further bore the seal of “RK” affixed by the SHO. He made the corresponding entry in Register No. 19 vide Entry No. 2378, marked as Exhibit PW11/A (Colly). PW12 further deposed that the SHO had signed the



register. On 08.07.2015, on the directions of PW9, the Investigating Officer, seven sealed cloth pullandas along with the FSL Form were sent to FSL Rohini through PW5 vide RC No. 196/21, marked as Exhibit PW11/B. PW12, in his cross-examination, denied the suggestion that the entries in Register No. 19 were manipulated or ante-dated or that he was deposing falsely.

23. As per the impugned judgment, the appellants stand convicted for the offence punishable under Section 20 of the NDPS Act. The contraband seized was 201 kgs of ganja. Therefore, the conviction is apparently for the offence punishable under Section 20(b)(ii)(c) of the NDPS Act. To sustain a conviction under the said provision, the prosecution is required to establish (i) recovery of cannabis (*ganja*); (ii) that such recovery was from the conscious possession of the accused; and (iii) that the quantity involved attracts the rigours prescribed for commercial quantity. Upon proof of possession, the statutory presumption under Sections 35 and 54 of the NDPS Act operates, unless



2026:DHC:1723



rebutted by the accused. In the present case, the seizure alleged is of 201 kilograms of *ganja* from a TSR bearing registration No. HR-38T-2626, in which both the appellants were present. Exhibit PW8/A FSL report confirms that the substance examined was *ganja* (cannabis). The quantity of 201 kilograms is indisputably commercial quantity. The first and third ingredients of the offence thus stand established.

24. The crucial question that falls for determination is whether the prosecution has proved that the said contraband was recovered from the conscious possession of both the appellants and whether the mandatory procedural safeguards under the NDPS Act were complied with.

25. The testimony of PW5, the detecting officer, finds material corroboration from PW2 and PW3, who were members of the raiding party. Their evidence is consistent on material particulars, namely, receipt of secret information, reduction of the same into writing vide DD No. 8, formation of the raiding party,



2026:DHC:1723



the place and time of apprehension, recovery of seven plastic bags from the TSR, the quantity seized, drawing of samples, sealing with the seal “OS”, preparation of seizure memo and filling of the FSL form. Nothing substantial has been elicited in cross-examination so as to discredit the core of the seizure. Both appellants were apprehended at the spot; appellant No.1 was driving the TSR and appellant No.2 was present therein along with the bags containing *ganja*. The contraband was recovered from the vehicle under their joint control. In the facts of the present case, conscious possession stands established against both the appellants.

26. As regards compliance of Section 50 of the NDPS Act, notices were served separately upon both appellants. Their replies, bearing their signatures, were recorded on the notices. The carbon copies of the said notices were recovered during personal search and deposited in the *malkhana*, as spoken to by PW9 and PW12. Though the recovery in the present case was effected from the



2026:DHC:1723



TSR and not from the personal search of the appellants, the prosecution has nevertheless established that they were apprised of their right to be searched before a Gazetted Officer or Magistrate and that they declined to avail the same. It is well settled that the provisions of Section 50 of the NDPS Act apply only to personal search and not to search of a vehicle [See **State of Punjab v. Baljinder Singh, (2019) 10 SCC 473**]. In the case on hand, the contraband was seized from the vehicle and not from the personal search of the accused and so Section 50 of the NDPS Act does not come into play.

27. It was submitted by the learned counsel for the appellants that there is material inconsistencies between the testimony of PW1 and PW5 regarding Ext. PW1/A report under Section 57 of the NDPS Act. PW1 has a case that he had produced the report under Section 57 of the NDPS Act before the ACP whereas PW5 has a different version. This argument does not appear correct because it is not the version of PW1 that he had



2026:DHC:1723



produced the report before the ACP. On the other hand, his case in the chief examination is that the report was received in the office of the ACP which was sent by PW5. PW1 only produced the said report before the trial court. It is true that in the cross-examination, PW1 deposed that PW5 had personally come to the office of the ACP to hand over Ext. PW1/A report under Section 57 of the NDPS Act. However, PW5 has no such case. PW5 deposed that he had sent the said report through Inspector Pankaj Singh (PW10) to be sent to the ACP (PW6). However, this inconsistency regarding the actual person who handed over the report to PW6 is not fatal in the light of the remaining materials before the Court.

28. The custody of the case property has also been duly proved. PW7, the then SHO, deposed that sealed parcels bearing the seal "OS" were produced before him; he affixed his seal "RK" on the parcels and the FSL form, mentioned the FIR particulars and caused the same to be deposited in the *malkhana*. PW12 proved the relevant entry in Register No. 19. The sealed sample



parcels were sent to FSL Rohini vide proper road certificate. Exhibit PW8/A FSL report records that the seals were intact and tallied with the specimen seals. The chain of custody thus stands proved and there is no material suggesting tampering. Mere delay in forwarding the samples, in the absence of any evidence of tampering and when the seals were found intact at the time of examination, is not fatal to the prosecution. The contention regarding delay in sending the samples to FSL does not merit acceptance in the absence of any evidence of tampering, especially when the seals were found intact at the time of examination.

29. The learned counsel for the appellants laid considerable emphasis on the absence of independent witnesses. The testimony of PW5 and PW9 indicate that attempts were made to associate persons, both enroute and at the spot, though none agreed to join the proceedings. The mere absence of independent witnesses does not, in all circumstances, render the prosecution case doubtful. As observed in **Surinder Kumar v. State of Punjab, (2020) 2 SCC**



2026:DHC:1723



563, the testimony of a witness cannot be discarded merely on the ground that he is an official witness; what is required is careful scrutiny of such evidence. In the present case, the official witnesses have been subjected to extensive cross-examination and nothing material has been elicited so as to discredit the seizure. Their version remains consistent on material particulars and inspires confidence. In such circumstances, the absence of independent witnesses, by itself, does not dent the prosecution case.

30. The movement of the raiding party is reflected in contemporaneous DD entries and has been uniformly spoken to by the prosecution witnesses. The use of private vehicles or non-examination of the driver does not create any material inconsistency as to the place or timing of apprehension. Similarly, non-examination of the registered owner of the TSR has also not affected the proof of seizure of the contraband. During the examination of PW5 before the trial court, it was revealed that the



TSR used for transporting the contraband was not in a running condition and that it could be brought to the Court only with the aid of a crane. The photographs of the TSR, namely, Ext. P1 to P4 produced were brought in evidence and marked without any objection on behalf of the appellants. That being the position, non-examination of the driver of the TSR is also not fatal to the prosecution case.

31. Another argument advanced is that despite the trial court noticing in paragraph 45 of the impugned judgment that there are contradictions in the testimony of the prosecution witnesses, the same has been ignored and a finding of guilt arrived at which is erroneous. I am unable to agree to this argument also advanced by the learned defence counsel. No case can be proved with mathematical precision. Inconsistencies are bound to arise in the testimony of the witnesses. The question to be considered is whether the inconsistencies are material and whether they have affected the prosecution case. In the case on hand, no



contradictions as per the procedure contemplated under Section 145 of the Indian Evidence Act, 1872 has been proved. The inconsistency pointed out is not that material and it has in no way affected the prosecution case. Nothing was brought out in the examination of the witnesses to disbelieve their testimony. So I find no reason(s) to disbelieve them or discard their testimony.

32. The burden is always on the prosecution to establish its case beyond reasonable doubt. The presumption contemplated under Sections 35 and 54 of the NDPS Act would come into operation only when the prosecution establishes the foundational facts. [See **Gorakh Nath Prasad v. State of Bihar, (2018) 2 SCC 305** and **Naresh Kumar v. State of H.P., (2017) 15 SCC 684**]. In the case on hand, the prosecution has discharged its initial burden by proving seizure of 201 kilograms of *ganja* from the TSR in the conscious possession of both the appellants and by establishing compliance with the statutory safeguards.



2026:DHC:1723



33. Once possession is established, the onus shifts to the accused to rebut the presumption, though not beyond reasonable doubt but on a preponderance of probabilities. (See **Harbhajan Singh v. State of Punjab, AIR 1966 SC 97; V.D. Jhingan v. State of U.P., AIR 1966 SC 1762; and Munshi Ram v. Delhi Administration, AIR 1968 SC 702**). In the present case, the appellants have merely denied the incriminating circumstances in their statements under Section 313(1)(b) Cr.P.C. and have asserted false implication. No defence evidence has been adduced to probabalise their version. The plea that they were apprehended from elsewhere was neither substantiated by evidence nor probabalised by the materials on record.

34. The reports under Sections 42 and 57 of the NDPS Act demonstrate communication of information and subsequent reporting to superior officers. The evidence of PW6 corroborates receipt and endorsement of such reports. It is also pertinent to note that the recovery having been effected from a TSR on a public



2026:DHC:1723



road, the case would fall within the ambit of Section 43 of the NDPS Act, and therefore the objection regarding non compliance of Section 42 does not carry the matter any further. The statutory safeguards embodied in Chapter V of the NDPS Act have thus been adhered to. The presumption under Section 54 arises only after the prosecution establishes, beyond reasonable doubt, that the contraband was recovered from the conscious possession of the accused and that mandatory procedural requirements were complied with. (See **Madan Lal v. State of Himachal Pradesh, AIR 2003 SC 3642**). That threshold stands satisfied in the present case.

35. In the light of the overall re-appreciation of the oral and documentary evidence, this Court finds that the prosecution has proved beyond reasonable doubt that the appellants were found in conscious possession of 201 kilograms of *ganja* (cannabis), a commercial quantity, and thereby committed the offence punishable under Section 20(b)(ii)(c) of the NDPS Act. In the light



2026:DHC:1723



of the quantity of contraband seized, the sentence also does not call for any interference. Thus, I do not find any infirmity in the findings of the trial court, calling for an interference by this Court.

36. In the result, the appeal *sans* merit is thus dismissed. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 27, 2026
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