

Bharat Aambale vs The State Of Chhattisgarh on 6 January, 2025

2025 INSC 78

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 250 OF 2025
(ARISING OUT OF SLP (CRL.) NO. 14420 OF 2024)

BHARAT AAMBALE

...APP

VERSUS

THE STATE OF CHHATTISGARH

...RESP

ORDER

1. Leave Granted.

2. This appeal is at the instance of a convict accused for the offence punishable under Section 20(b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the “NDPS Act”) and is directed against the judgment and order passed by the High Court of Chhattisgarh, Bilaspur dated 8th July, 2024 in Criminal Appeal No. 731 of 2023 by which the High Court dismissed the appeal filed by the appellant herein and thereby affirmed the judgment and order of conviction passed by the Special Judge, (NDPS Act), Mahasamund in Special Criminal Case No. H-29/2017 holding the appellant herein guilty of the offence enumerated above and sentencing him to undergo rigorous imprisonment for a period of 15 years and fine of Rs.1 lakh.

3. The only contention raised before us by the learned counsel appearing for the appellant herein is that the conviction could be said to have stood vitiated because of the non-compliance of Section 52A of the NDPS, Act.

4. The learned counsel appearing for the appellant placed strong reliance on the decision of this Court rendered in the case of Union of India v. Mohan Lal & Anr. reported in (2016) 3 SCC 379 to make good his submission that non-compliance of Section 52A of the NDPS Act along with the relevant rules, would vitiate the entire trial and the conviction.

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are not impressed with the submission as regards Section 52A of the NDPS Act.

Legislative History & Scope of Section 52A of the NDPS Act.

6. Before proceeding with the analysis, it would be apposite to first delve into the legislative history and purport of Section 52A of the NDPS Act. Much before the enactment of NDPS Act, 1985 the statutory control over narcotic drugs was exercised in India through number of scattered legislations like the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930. With the passage of time and rampant increase in illicit drug trafficking and abuse of several substances, many deficiencies in the older legislations were noticed. This led to the enactment of the NDPS Act. The Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, and to provide for the forfeiture of property derived from or involved in the illicit drug trafficking.

7. Section 52A of the NDPS Act came into existence as part of the amendments made in 1989 following the original enactment of the NDPS Act in 1985. It was inserted due to several practical challenges that were encountered in the enforcement of the law, more particularly concerning the management of seized narcotic substances. Before its introduction, there was no specific statutory provision detailing the disposal of such substances which led to logistical and financial difficulties in storing seized drugs for prolonged periods, given the large quantities often involved and the need for strict security measures to prevent theft or misuse. The absence of clear guidelines resulted in long delays in trials, as the seized substances had to be preserved intact for being produced as evidence before the court. This created a situation where seized drugs remained in storage for years, increasing the risk of their degradation, theft, or diversion back into illicit markets. This was further compounded by the highly sensitive nature of narcotic drugs and psychotropic substances, which required specialized storage facilities to maintain its integrity and prevent misuse. Additionally, the lack of clarity regarding the disposal process often resulted in inconsistencies and inefficiencies, particularly in the sampling, testing and reporting of such substances which undermined the very trial itself and the overall effectiveness of the NDPS Act. These issues highlighted the urgent need for a streamlined, legally sanctioned mechanism for the disposal of seized substances while ensuring that such disposal did not compromise the integrity of the legal process or the evidentiary value of the material in question.

8. Over a period of time, it was also noticed by the Narcotics Control Bureau (NCB) that different investigating officers of various enforcement agencies and States were adopting different procedures in drawing samples from seized narcotic drugs and psychotropic substances, etc. Therefore, with a view to bring uniformity of approach in such matters and to provide for a secured system of handling of drug samples, the NCB had issued the Standing Order No. 1 of 88 vide the notification dated 15.03.1988 prescribing the procedure to be followed for drawing samples from the seized narcotic drugs and psychotropic substances, numbering of samples drawn, sealing, mode of packing, dispatch of samples to the concerned laboratory for test etc. Thereafter, recognizing the importance of dispatch, transit, receipt, safe custody, storage, proper accounting and disposal destruction of the seized/confiscated drugs and the need for evolving a uniform procedure, the NCB issued the Standing Order No. 2 of 88 vide the notification dated 11.04.1988 formulating the procedure for seizure, sampling and storage of contraband.

9. However, despite the aforesaid the necessity to insert Section 52A was felt in view of the International Convention of 1988 held by the United Nations, which adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 and the South Asian Association for Regional Cooperation (SAARC) held in December, 1988, where it was resolved that the Member-States would take measures for early destruction or lawful disposal of narcotic drugs and psychotropic substances. Since, India being a Member-State, was a signatory to the said conventions, the Central Government introduced a Bill in Parliament, i.e., the Narcotic Drugs or Psychotropic Substances (Amendment) Bill, 1988, specifically to give effect to the International Conventions in the substantive Act. Accordingly, Section 52A of the NDPS Act came to be inserted by the Act 2 of 1989, which came into force with effect from 29.05.1989. The said provision reads as under: -

“52A. Disposal of seized narcotic drugs and psychotropic substances. — (1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of —

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

(b) taking in the presence of such magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

10. Section 52A of the NDPS Act lays down a comprehensive procedure for the disposal of seized narcotic drugs and psychotropic substances. Sub-section (1) empowers the Central Government to prescribe the manner in which such substances are to be disposed of. Sub-section (2) provides that the officer in charge of the police station or the officer authorized under Section 53, who has seized the substances, shall prepare an inventory of the seized material. The inventory must include details such as the description, quantity, mode of packing (including the mode of conveyance being used such as any vehicle), identifiable marks or numbers, country of origin and other particulars as necessary of the substances so seized. This inventory is to be forwarded to the magistrate having jurisdiction over the case by way of an application. Under sub-section (3), the magistrate, upon receiving the application, is required to certify the correctness of the inventory so prepared. The certification process involves taking photographs of the original seized substances (including the mode of conveyance being used such as any vehicle), verifying the correctness of the inventory prepared against the same, and thereafter drawing representative samples in the presence of the magistrate, which are then sealed and its details are entered into a list which is certified by the magistrate. These certified samples, along with the inventory and photographs, are admissible as evidence during trial under sub-section (4) and are to be treated as primary evidence.

11. Thereafter, in order to formulate and prescribe a set procedure, the Standing Order No. 1 of 1989 vide notification dated 13.06.1989 came to be issued which laid down the procedure to be followed while conducting seizure of the contraband. Two subsequent notifications in lieu of the said Standing Order came to be issued dated 10.05.2007 and 16.01.2015 respectively, that dealt with the procedure for disposal and destruction of seized contraband. Clause 2.1 of the said Standing Order No. 1 of 1989 stated that all drugs shall be properly classified, carefully weighed and sampled on the spot of seizure. The said Standing Order also provided about the drawing of samples on the spot of recovery, quantity to be drawn for sampling, etc. It also provided a detailed procedure with regard to the method of drawing of representative samples, storage of samples, dispatch of samples, preparation of inventory, etc., and also provided for an early disposal of drugs and other articles by having recourse to the provisions of sub-section (2) of Section 52A of the Act. Ultimately, the aforesaid Standing Order(s) came to be repealed with the enactment of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (for short, the “NDPS Rules”), that consolidated the entire framework and procedure to be followed for the seizure, storage, sampling and disposal of the seized material.

12. Thus, it can be seen that the scope of Section 52A although primarily for the disposal and destruction of seized contraband in a safe manner yet extends beyond the immediate context of drug disposal, as it serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. By providing for the preparation of inventories and certification by magistrates, the provision enhances the credibility and reliability of evidence presented during trial, minimizing the scope for disputes or challenges related to the handling and disposal of seized substances.

13. In Mohanlal (supra) this Court exhaustively explained the scope of Section 52A of the NDPS Act, the Standing Order(s) issued thereunder and the procedure envisaged under the same for seizure, storage and disposal of narcotic substances as follows: -

(i) Section 52A sub-section (1) empowers the Central Government to prescribe the procedure to be followed for seizure, storage and disposal of narcotic substances, and in exercise of the same, the aforesaid Standing Order(s) were issued (as amended from time to time). The relevant observations read as under: -

“12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government has in exercise of that power issued Standing Order No. 1 of 1989 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10-5-2007 and the other dated 16-1-2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of Standing Order No. 1 of 1989 states that samples must be taken from the seized contraband on the spot at the time of recovery itself.”

(ii) As per sub-section (2) of Section 52A, upon seizure of such substance, the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated under the said provision and then make an application to the magistrate for the purposes of certifying the correctness of the inventory, photographs etc. and to draw representative samples therefrom in its presence. The relevant observations read as under: -

“15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory,

(b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.”

(iii) As per Section 52A sub-section (3) as soon as the seizure is effected and the contraband is forwarded, the officer concerned is in law duty-

bound to approach the magistrate as soon as possible for the purposes mentioned above including grant of permission to draw representative samples in his presence, which will then be enlisted and certified. Thus, the entire process of drawing of samples has to be in the presence and under the supervision of the magistrate and the entire exercise has to be certified as correct. The relevant observations read as under: -

“16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.”

(iv) Section 52A of the NDPS Act does not require drawing of samples at the very time of seizure or even at the spot where the contraband was seized. However, as per sub-section (4) of Section 52A only those samples which are drawn in presence of a magistrate and certified by it will constitute primary evidence for the purpose of the trial. The relevant observations read as under: -

“17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.” (Emphasis supplied)

(v) The scheme of the Act in general and Section 52A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While no strict time-frame can be prescribed into the said provision, yet the entire process of sampling and certification ought to be done in a reasonable period without any undue delay. The relevant observations read as under: -

“19. [...] There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the

process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.”

(vi) As per Section 55 of the NDPS Act the officer-in-charge of a police station shall take charge of and keep in safe custody the remaining seized article pending orders of the magistrate concerned for its disposal or destruction. Further, as per the Standing Order(s), such seized substances must be stored in appropriate safe vaults or godowns as prescribed thereunder as far as possible. The relevant observations read as under: -

“20. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer-in-charge of a police station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by the learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government inasmuch as Standing Order No. 1 of 1989 has made specific provisions in regard to the same. Section III of the said Order deals with “Receipt of Drugs in Godowns and Procedure” which inter alia provides that all drugs shall invariably be stored in “safes and vaults” provided with double-locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.” (Emphasis supplied)

(vii) As per Clause 4 of the notification dated 16.01.2015 amending the Standing Order No. 1 of 1989, the officer in charge of the police station shall within 30-days from the date of receipt of chemical analysis report of the seized substances apply to the magistrate for disposal of the remaining substance.

“27. Section 52-A as amended provides for disposal of the seized contraband in the manner stipulated by the Government under sub-section (1) of that section.

Notification dated 16-1-2015, in supersession of the earlier Notification dated 10-5-2007 not only stipulates that all drugs and psychotropic substances have to be disposed of but also identifies the officers who shall initiate action for disposal and the procedure to be followed for such disposal. Para 4 of the Notification, inter alia, provides that officer in charge of the police station shall within 30 days from the date of receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate under Section 52-A(2) in terms of Annexure 2 to the said Notification.”

(viii) After the aforesaid application is allowed, the concerned officer is required to submit details of the seized items to the Chairman of the Drugs Disposal Committee for a decision on disposal along with a copy to the officer in charge of the godown where such substance is stored. Thereafter, the Drugs Disposal Committee shall order the disposal in terms of the procedure envisaged under Clauses 7 & 8, respectively of the Standing Order as amended by notification dated 16.01.2015 and thereafter issue a certificate of destruction or disposal. “28. Sub-para (2) of Para 4 provides that after the Magistrate allows the application under sub-section (3) of Section 52-A, the officer mentioned in sub-para (1) of Para 4 shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal Committee for a decision by the Committee on the question of disposal. The officer shall also send a copy of the details along with the items seized to the officer in charge of the godown. Para 5 of the Notification provides for constitution of the Drugs Disposal Committee while Para 6 specifies the functions which the Committee shall perform. In Para 7 the Notification provides for procedure to be followed with regard to disposal of the seized items, while Para 8 stipulates the quantity or the value up to which the Drugs Disposal Committee can order disposal of the seized items. In terms of proviso to Para 8 if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drugs Disposal Committee is required to send its recommendations to the head of the department who shall then order their disposal by a high-level Drugs Disposal Committee specially constituted for that purpose. Para 9 prescribes the mode of disposal of the drugs, while Para 10 requires the Committee to intimate to the head of the Department the programme of destruction and vest the head of the Department with the power to conduct a surprise check or depute an officer to conduct such checks on destruction operation. Para 11 deals with certificate of destruction while Paras 12 and 13 deal with details of sale to be entered into the godown register and communication to be sent to the Narcotics Control Bureau.”

14. At this stage it would be appropriate to refer to a few decisions of this Court on the subject, to understand the instances where a conviction had been set aside on account of non-compliance of Section 52A of the NDPS Act.

15. In *Noor Aga v. State of Punjab & Anr.* reported in (2008) 16 SCC 417 the case of the prosecution therein was that 1.4 kg heroin concealed in a cardboard container was allegedly recovered from the appellant therein. However, neither the bulk quantity of heroin nor the cardboard carton containing

the same was ever produced before the court. The explanation that was put forth by the prosecution for such omission was that the original cardboard carton had gone missing whereas the heroin which was seized had been destroyed. However, neither any order of disposal in terms of Section 52A for the destruction of the heroin nor any photographs or inventory details of the carton in terms of the Standing Order(s) was placed before the court. Moreover, the samples of the seized narcotic substance had also been drawn in complete violation of the procedure envisaged under the Standing Order(s) and had several discrepancies as regards the weight and colour and uncorroborated by any independent witnesses. The High Court however, convicted the appellant on the ground that as per the record, all seized material had been duly sealed, thus, the physical evidence could be said to have been intact and in safe custody. In appeal, this Court speaking through Justice S.B. Sinha after examining Section 52A and the aforesaid Standing Order(s) issued pursuant thereto held as follows:

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(i) First, it held that Section 52A provides for disposal of seized narcotic substances whereby the officer empowered under Section 53 is first required to prepare an inventory of the seized substances, record details relating to their description, quality, quantity and packaging along with any other marks relevant for the purpose of identification of the same.

It further held that since the aspect of disposal is clearly provided only under Section 52A of the NDPS Act and no other provision, any destruction or disposal of such substances can only be done with a clear direction or order from the competent magistrate and as per the procedure envisaged under the said provision and Clause 3.9 of the standing order thereunder. The relevant observations read as under: -

“28. Section 52-A provides for disposal of seized narcotic drugs and psychotropic substances [...] xxx xxx xxx

93. The only course of action the prosecution should have resorted to is to obtain an order from the competent court of the Magistrate as envisaged under Section 52-A of the Act in terms whereof the officer empowered under Section 53 upon preparation of an inventory of narcotic drugs containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as he may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings thereunder [...]

94. We must also notice a distinction between Section 110(1-B) of the 1962 Act and Section 52-A(2) of the Act as sub-section (4) thereof, namely, that the former does not contain any provision like sub-section (4) of Section 52-

A. It is of some importance to notice that Para 3.9 of the Standing Order requires pre-trial disposal of drugs to be obtained in terms of Section 52-A of the Act. Exhibit PJ can be treated as nothing

other than an order of authentication as it is a certificate under Section 110(1-B) of the 1962 Act as the aspect of disposal clearly provided for under Section 52-A of the Act is not alluded to. [...] authority for disposal would require a clear direction of the court in terms of Section 52-A of the Act. Fourthly, the High Court failed and/or neglected to consider that physical evidence being the property of the court and being central to the trial must be treated and disposed of in strict compliance with the law.” (Emphasis supplied)

(ii) Secondly, it held that the guidelines issued by way of the Standing Order(s) for the purposes of Section 52A cannot be blatantly flouted and substantial compliance of the same is necessary to ensure that the sanctity of physical evidence remains intact. The relevant observations read as under: -

“89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

xxx xxx xxx

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. [...]” (Emphasis supplied)

(iii) Lastly, it held that any failure on the part of the authorities in substantially complying with the procedure contemplated under the Standing Order(s) would lead to drawing of an adverse inference against the prosecution if there exists any discrepancies in the physical evidence. It further held that while such discrepancies in physical evidence when examined individually may not be fatal but an overall view with respect to such discrepancies can create an overarching dent on the credibility of the prosecution’s case. The relevant observations read as under: -

“92. Omission on the part of the prosecution to produce evidence in this behalf must be linked with a second important piece of physical evidence that the bulk quantity of heroin allegedly recovered indisputably has also not been produced in court. The respondents contended that the same had been destroyed. However, on what authority it was done is not clear. Law requires that such an authority must flow from an order passed by the Magistrate.

xxx xxx xxx

95. The High Court proceeded on the basis that non-

production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. [...] xxx xxx xxx

119. [...]

4. Finding on the discrepancies, although if individually examined, may not be fatal to the case of the prosecution but if cumulative view of the scenario is taken, the prosecution's case must be held to be lacking in credibility.” (Emphasis supplied) Accordingly, this Court while setting aside the order of conviction passed by the High Court held that the destruction of the seized substance in violation of Section 52A coupled with the omission on the part of the prosecution in producing either the substance itself prior to its disposal, the sample taken therefrom or the original seals on the container without any explanation along with several other significant discrepancies in its recovery and storage created serious doubt over the prosecution’s case. The relevant observations read as under: -

“96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52-A of the Act.

97. The fate of these samples is not disputed. Although two of them were kept in the malkhana along with the bulk, but were not produced. No explanation has been offered in this regard.

So far as the third sample, which allegedly was sent to the Central Forensic Science Laboratory, New Delhi is concerned, it stands admitted that the discrepancies in the documentary evidence available have appeared before the court, namely:

(i) While original weight of the sample was 5 gm, as evidenced by Exts. PB, PC and the letter accompanying Ext. PH, the weight of the sample in the laboratory was recorded as 8.7 gm.

(ii) Initially, the colour of the sample as recorded was brown, but as per the chemical-examination report, the colour of powder was recorded as white.

98. We are not oblivious of the fact that a slight difference in the weight of the sample may not be held to be so crucial as to disregard the entire prosecution case as ordinarily an officer in a public place would not be carrying a good scale with him. Here, however, the scenario is different. The place of seizure was an airport. The officers carrying out the search and seizure were from the Customs Department. They must be having good scales with them as a marginal increase or

decrease of quantity of imported articles whether contraband or otherwise may make a huge difference under the Customs Act.

99. We cannot but also take notice of other discrepancies in respect of the physical evidence which are:

(i) The bulk was kept in cotton bags as per the panchnama, Ext. PC, while at the time of receiving them in the malkhana, they were packed in a tin as per the deposition of PW 5.

(ii) The seal, which ensures sanctity of the physical evidence, was not received along with the materials neither at the malkhana nor at CFSL, and was not produced in court.

100. Physical evidence of a case of this nature being the property of the court should have been treated to be sacrosanct. Non-production thereof would warrant drawing of a negative inference within the meaning of Section 114(g) of the Evidence Act. While there are such a large number of discrepancies, if a cumulative effect thereto is taken into consideration on the basis whereof the permissive inference would be that serious doubts are created with respect to the prosecution's endeavour to prove the fact of possession of contraband by the appellant.” (Emphasis supplied)

16. In *Union of India v. Jarooparam* reported in (2018) 4 SCC 334, it was alleged by the prosecution that 7.2 kg of opium had been recovered from the accused persons therein. This Court in appeal, upheld the order of acquittal on the following two grounds: -

(i) First, although the sealed samples were drawn from the seized substance in presence of the executive magistrate in consonance with the procedure envisaged under Section 52A of the NDPS Act and the Standing Order(s) thereunder, yet instead of the seized substance thereafter being destroyed / disposed in terms of the procedure laid therein, the executive magistrate specifically returned the remaining seized substances to the investigating officer as the trial court therein had specifically directed to preserve the same as the other co-accused therein was still absconding. In such circumstances, the explanation offered by the prosecution for its failure to produce the remaining seized substances before the trial court that the same had been destroyed was disbelieved as doubtful by this Court, as no such destruction or disposal had taken place in terms of Section 52A of the NDPS Act. This Court held that any destruction or disposal of the seized substance could have taken place only in terms of the procedure envisaged under Section 52A of the NDPS Act and only after obtaining an order in this regard from the competent magistrate. The relevant observations read as under: -

“9. From the above proceedings, it is crystal clear that the remaining seized stuff was not disposed of by the Executive Magistrate. The contraband stuff as also the samples sealed as usual were handed over physically to the Investigating Officer Harvinder

Singh (PW 6). Also the trial court in its judgment specifically passed instructions to preserve the seized property and record of the case in safe custody, as the co-accused Bhanwarlal was absconding. The trial court more specifically instructed to put a note with red ink on the front page of the record for its safe custody. In such a situation, it assumes importance that there was nothing on record to show as to what happened to the remaining bulk quantity of contraband. The absence of proper explanation from the prosecution significantly undermines its case and reduces the evidentiary value of the statements made by the witnesses.

10. Omission on the part of the prosecution to produce the bulk quantity of seized opium would create a doubt in the mind of the Court on the genuineness of the samples drawn and marked as A, B, C, D, E, F from the allegedly seized contraband. However, the simple argument that the same had been destroyed, cannot be accepted as it is not clear that on what authority it was done. Law requires that such an authority must flow from an order passed by the Magistrate. On a bare perusal of the record, it is apparent that at no point of time any prayer had been made by the prosecution for destruction of the said opium or disposal thereof otherwise. The only course of action the prosecution should have resorted to is for its disposal is to obtain an order from the competent court of Magistrate as envisaged under Section 52-A of the Act. It is explicitly made under the Act that as and when such an application is made, the Magistrate may, as soon as may be, allow the application.

[...]

11. There is no denial of the fact that the prosecution has not filed any such application for disposal/destruction of the allegedly seized bulk quantity of contraband material nor was any such order passed by the Magistrate. Even no notice has been given to the accused before such alleged destruction/disposal. It is also pertinent here to mention that the trial court appears to have believed the prosecution story in a haste and awarded conviction to the respondent without warranting the production of bulk quantity of contraband. But, the High Court committed no error in dealing with this aspect of the case and disbelieving the prosecution story by arriving at the conclusion that at the trial, the bulk quantities of contraband were not exhibited to the witnesses at the time of adducing evidence.” (Emphasis supplied)

(ii) Secondly, the other aspect which weighed with this Court in disbelieving the prosecution’s case was the fact that the independent witnesses therein had also turned hostile and did not support the alleged recovery of the seized substances. This Court further took note of other discrepancies in the prosecution’s case against the accused therein, more particularly the alleged confessional statement, whereby this Court had no hesitation in upholding the order of acquittal passed by the High Court. The relevant observations read as under: -

“12. Turning to the other discrepancies in the prosecution case, PWs 1 and 2 the independent witnesses portrayed by the prosecution have turned hostile and did not support its case. It is manifest from the record that they had simply put their

signatures on the papers at the whims of the investigating agency. Another aspect that goes in favour of the accused is that, the version of prosecution that the respondent voluntarily made the confessional statement cannot be believed in the light of admission by Narcotics Officer (PW 5), a key prosecution witness, that the statement of the respondent-accused under Section 67 of the Act was recorded while he was in his custody and the time was not mentioned on the statements. This fact further gets corroborated with the statement of PW 6 also that the statement of the accused was recorded after arrest and while in custody. Thus, it cannot be said that the statement of the accused confessing the crime was voluntarily made under the provisions of the Act.” (Emphasis supplied)

17. In yet another decision of this Court in *Yusuf @ Asif v. State* reported in 2023 SCC OnLine SC 1328 it was held that Section 52A of the NDPS Act, more particularly, sub-sections (2), (3) and (4) prescribes the procedure and manner for seizure of narcotics substances. It observed that as per the said provision, where any contraband or narcotic substance is seized, the same has to be forwarded to the officer empowered under Section 53 of the NDPS, who in turn would prepare the inventory of such material along with the description of its quality, mode of packing and identifying marks etc. Thereafter, an application has to be made in terms of Section 52A sub-section (3) whereby the magistrate shall certify the correctness of the inventory prepared and permit drawing samples from such substance in his presence. It further held, that as per *Mohanlal* (supra) only those samples which were drawn in presence of the magistrate in terms of Section 52A would constitute primary evidence for the purpose of trial. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act. The relevant observations read as under: -

“10. [...] it would be relevant to refer to the provisions of Section 52A (2), (3) and (4) of the NDPS Act. The aforesaid provisions provide for the procedure and manner of seizing, preparing the inventory of the seized material, forwarding the seized material and getting inventory certified by the Magistrate concerned. It is further provided that the inventory or the photographs of the seized substance and any list of the samples in connection thereof on being certified by the Magistrate shall be recognized as the primary evidence in connection with the offences alleged under the NDPS Act.

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12. A simple reading of the aforesaid provisions, as also stated earlier, reveals that when any contraband/narcotic substance is seized and forwarded to the police or to the officer so mentioned under Section 53, the officer so referred to in sub-section (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness

and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

13. Notwithstanding the defence set up from the side of the respondent in the instant case, no evidence has been brought on record to the effect that the procedure prescribed under sub-

sections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. The mere fact that the samples were drawn in the presence of a gazetted officer is not sufficient compliance of the mandate of sub-section (2) of Section 52A of the NDPS Act.

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15. In Mohanlal's case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.” (Emphasis supplied) Accordingly, this Court, while setting aside the order of conviction, held that since i) the samples from the seized substance were neither drawn in presence of the magistrate nor was the inventory duly certified by it; AND

ii) there being a serious doubt about the correctness of the samples sent for analysis, they cannot be treated as a primary evidence, thereby vitiating the whole trial. The relevant observations read as under: -

“8. We have heard learned Senior counsel for the appellant. The main plank of his argument is that the entire action of seizure and sampling is wholly illegal. It was done in violation of the mandatory provisions of Section 52A (2) of the NDPS Act as the procedure prescribed therein was not followed in drawing the samples and seizing the alleged narcotic substance. Further, there is a serious doubt about the correctness of samples sent for analysis as to whether they were actually the samples of the seized contraband.

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16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent

that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated.” (Emphasis supplied)

18. The scope of Section 52A of the NDPS Act was again looked into by this Court in its decision in *Mangilal v. State of Madhya Pradesh* reported in 2023 SCC OnLine SC 862. In the said case, the narcotic substance in the nature of poppy straw was alleged to have been recovered from the accused persons therein. In the trial, the prosecution was permitted to keep the seized substance at the police station so that it could be produced later on, however, the prosecution failed in doing so, citing that the same had been disposed / destroyed, although no such order of disposal in terms of Section 52A was produced before the court. This Court whilst setting aside the order of conviction held as under: -

(i) First, it held that Section 52A sub-section (1) enables the Central Government to prescribe a particular mode and procedure for disposal of seized narcotic substance. The underlying object of the said provision being to ensure that such substances after being seized are safely disposed of rather than being used or recirculated for illegal means.

Sub-section (2) of Section 52A mandates the competent officer to prepare an inventory of the substances so seized along with the requisite details. Thereafter, an application has to be made to the appropriate magistrate for the purpose of certifying the inventory as true, taking adequate photographs and drawing samples in his presence, and only thereafter may the seized substances be destroyed by way of a certificate of destruction by the magistrate under the said provision. The object of this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. The entire procedure envisaged under Section 52A of the NDPS Act is meant to inject fair- play in the investigation. It further held that Section 52A of the NDPS Act is a mandatory rule of evidence and where there is non-compliance of the same or where the photographs, inventory or samples lack the certification of a magistrate, they will not constitute primary evidence. The relevant observations read as under: -

“4. Sub-section (1) of Section 52A of the NDPS Act facilitates the Central Government a mode to be prescribed to dispose of the seized narcotic substance. The idea is to create a clear mechanism for such disposal both for the purpose of dealing with the particular case and to safeguard the contraband being used for any illegal purpose thereafter.

5. Sub-section (2) of Section 52A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence with due certification. Such an application can be filed for anyone of the aforesaid three

purposes. The objective behind this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence.

6. The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn. In due compliance of Section 52A(1) of the NDPS Act the Ministry of Finance (Department of Revenue) issued a Notification No. G.S.R. 339(E) dated 10.05.2007 which furnishes an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction.” (Emphasis supplied)

(ii) Secondly, it held that the provisions of the NDPS Act are both stringent and rigorous and as such any proposed disposal or destruction of the seized substance must take place only by way of an application as per the mandate of Section 52A of the NDPS Act and strictly in consonance of the guidelines issued thereunder. It further held that wherever any issues arise as to the seizure, recovery sampling or disposal of narcotics substances, the onus would lie on the prosecution to prove the compliance of the procedure envisaged under the said provision.

Physical material being a factor to establish seizure and recovery, non- production of the same would lead to an adverse inference within the meaning of Section 114(g) of the Indian Evidence Act, 1872 (for short, the “Evidence Act”). The relevant observations read as under: -

“7. To be noted, the aforesaid notification was in existence at the time of the commission of the offence alleged in the case on hand, stood repealed with effect from 23.12.2022 vide Notification No. G.S.R.899(E). In any case a notification issued in derogation of the powers conferred under sub-section (1) of Section 52A of the NDPS Act can never contradict the main provision, particularly sub- Section (2). However, any guideline issued by way of a notification in consonance with Section 52A of the NDPS Act has to be followed mandatorily.

8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the

meaning of Section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples. [...]” (Emphasis supplied)

(iii) Lastly, it held that the order of conviction was unsustainable as there was a serious doubt with respect to the seizure. No explanation had been offered either for the non-production of the seized material or the manner in which they were disposed-off. The executive magistrate therein denied passing any order in terms of Section 52A of the NDPS Act. Two witnesses to the seizure turned hostile while the third witness was not examined. Moreover, one of the police officers himself had deposed as to the existence of the same seized material even before the occurrence. Thus, this Court taking a cumulative view of the material irregularities held that the same rendered the very case of the prosecution doubtful, and thus, acquitted the accused without hesitation. The relevant observations read as under: -

“11. The memorandum of informer's information dated 20.05.2010 exhibited under P-3 indicates signature of two witnesses, P.W.2 and P.W.6, both of them turned hostile.

Though they admitted their signature it was clearly deposed that they were not present at the scene of occurrence. In our considered view the Court below have wrongly construed the evidence, in fact these two witnesses were party to most of the exhibits running upto 13. Search warrant under Exhibit P-4 acknowledged the fact that procedure contemplated under the NDPS Act has not been followed. As noted, one of the witnesses to the seizure memo has not been examined while the other turned hostile. Both the witnesses to the arrest memo have not been examined. [...]

12. We further find that memorandum under Section 27 of the Act, as witnessed by the two witnesses, P.W.3 and P.W.4 would be of no value in evidence as there is no discovery of new fact involved. Be that as it may, these witnesses also turned hostile. The record would also indicate that an order was passed by the trial Judge permitting the prosecution to keep the seized materials within the police station, to be produced at a later point of time. This itself is a sufficient indication that the mandate of Section 52A has not been followed. There is no explanation either for non-production of the seized materials or the manner in which they are disposed of. No order passed by the Magistrate allowing the application, if any, filed under Section 52A of the NDPS Act. P.W.10, Executive Magistrate has deposed to the fact that he did not pass any order for the disposal of the narcotics substance allegedly seized. Similarly, P.W.12 who is In-charge of Malkhana also did not remember any such order having been passed. [...]

13. There is a serious doubt with respect to the seizure. P.W.5 who was a police officer himself had deposed on the existence of the very same seized materials even before the occurrence. This testimony which destroys the very basis of the prosecution case has not even been challenged.

14. Both the Courts have mechanically placed reliance on the FSL Report while taking the statement of P.W.11 as the gospel truth. The views expressed by him can at best be taken as opinion at least on certain aspects. There are too many material irregularities which create a serious doubt on the very case of the prosecution. On a proper analysis we have no hesitation in holding that the impugned judgments are liable to be set aside and the appellant is to be acquitted by rendering the benefit of doubt.”

19. In *Simarnjit Singh v. State of Punjab* reported in 2023 SCC OnLine SC 906 this Court relying upon *Mohanlal* (supra) held that drawing of samples at the time of seizure in the absence of the magistrate is not in conformity with the mandate of Section 52A sub-section (2) of the NDPS Act and creates a serious doubt about the prosecution’s case that the substance recovered was a contraband. The relevant observations read as under: -

“9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of *Mohanlal*. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.”

20. In *Mohammed Khalid & Anr. v. State of Telangana* reported in (2024) 5 SCC 393, the case of the prosecution therein was that 80kg of ganja had been allegedly recovered from the accused persons therein. Although, three samples were allegedly drawn on the spot from the seized substance yet the same was neither done in the presence of a magistrate nor were the samples certified by one, as required under Section 52A of the NDPS Act. This Court set-aside the order of conviction on the ground that there were glaring loopholes in the prosecution’s case that made it doubtful as to whether the samples drawn remained untampered or in safe custody from the time of seizure till it reached the FSL. It observed that the FSL report did not disclose about the seals on the sample and although it was stated that two samples were sent to FSL, yet in fact a total of three samples actually reached the lab. Similarly, the remaining substance that were seized also had no seal. During the safekeeping of the seized material, the containers for storing the same were changed without any explanation. In view of the aforesaid, this Court held that the non-compliance of the procedure under Section 52A of the NDPS Act for drawing the samples along with the doubtfulness over the safe custody of the sample packets rendered the FSL report as nothing but a waste paper which cannot be read in evidence. The relevant observations read as under: -

“24. The FSL report (Ext. P-11) does not disclose about the panch chits and seals and signature of the accused on samples. The property deposited in the Court (muddamal) was not having any official seals. The witness also admitted that he did not take any permission from the Court for changing the original three packets of muddamal ganja to seven new bags for safekeeping.

25. These glaring loopholes in the prosecution case give rise to an inescapable inference that the prosecution has miserably failed to prove the required link evidence to satisfy the Court regarding the safe custody of the sample packets from the time of the seizure till the same reached the FSL. Rather, the very possibility of

three samples being sent to the FSL is negated by the fact that the seizure officer handed over one of the three collected samples to the accused. Thus, there remained only two samples whereas three samples reached the FSL. This discrepancy completely shatters the prosecution case.

26. Admittedly, no proceedings under Section 52-A of the NDPS Act were undertaken by the investigating officer PW 5 for preparing an inventory and obtaining samples in the presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Ext. P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot.” (Emphasis supplied)

21. In *Narcotics Control Bureau v. Kashif* reported in 2024 SCC OnLine SC 3848 the accused therein was enlarged on bail by the High Court on the ground that there had been a delay in following the procedure envisaged under Section 52A of the NDPS Act, more particularly in drawing the samples from the seized Tramadol tablets. This Court in appeal whilst setting aside the High Court’s order releasing the accused therein on bail, held as under: -

(i) First, that the object behind insertion of Section 52A of the NDPS Act was to provide for a mechanism for the early disposal of the seized narcotic drugs and psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. The relevant observations read as under: -

“20. Now, so far as Section 52A is concerned, the language employed therein itself is very clear that the said provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. Apart from the plain language used in the said section, its Heading also makes it clear that the said provision was inserted for the Disposal of the seized narcotic drugs and psychotropic substances. As per the well settled rule of interpretation, the Section Heading or Marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The Section Heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble.”

21. The insertion of Section 52A with the Heading “Disposal of seized narcotic drugs and psychotropic substances” along with the insertion of the words “to provide for the forfeiture of property derived from or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of International Conventions on Narcotics Drugs and Psychotropic Substances”, in the long title of the NDPS Act, by Act 2 of 1989 w.e.f. 29.05.1989, leaves no room of doubt that the said provision of Section 52A was inserted for an early disposal of the seized narcotic drugs and

psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. The Heading of Section 52A i.e. Disposal of seized narcotic drugs and psychotropic substances delineates the object and reason of the insertion of said provision and such Heading cannot be underscored. From the bare reading of Section 52A also it is very much discernible that sub-section (1) thereof empowers the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, to specify narcotic drugs, psychotropic substances for the purpose of their disposal as soon as may be after their seizure, by such officer and in such manner as the Central Government may determine after following the procedure specified in sub-section (2).

22. Sub-section (2) of Section 52A prescribes the procedure to be followed by the authorized officers for the disposal of such contraband narcotics drugs and psychotropic substances at the pre-trial stage. As per the procedure laid down in the said sub-section, where any narcotic drug, psychotropic substance or controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the concerned officer authorized as per sub-section (1) has to prepare an inventory of such drugs or substances in the manner as stated in the said provision, and then make an application to the Magistrate for the purpose of

(a) certifying the correctness of the inventory so prepared; or (b) taking, in presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn. Sub-section (3) requires that an application made under sub-section (2), should be allowed by the Magistrate as soon as may be, and sub-section (4) thereof states that such inventory, photographs and the list of samples so drawn, if any, under sub-section (2) and certified by the Magistrate shall be treated as the primary evidence in respect of the offence under the Act.” (Emphasis supplied)

(ii) Secondly, Section 52A sub-section (2) prescribes the procedure for the purpose contemplated under sub-section (1) i.e., for the disposal of the seized contraband. Any breach, deviation or delay in the said procedure would at most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. Mere non-

compliance of the procedure envisaged under Section 52A of the NDPS Act will not entitle the accused to acquittal or bail, if there is sufficient material to establish the search and seizure of the contraband in due compliance of the mandatory provisions of the Act. The relevant observations read as under: -

“23. As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub- section (1) thereof, for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under subsection (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an “irregular proceeding” and an “illegal proceeding.” While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings.

24. Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned officer authorised to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act.

25. It is significant to note that as per Section 54 of the said Act, the courts are entitled to presume, unless and until the contrary is proved that the accused had committed an offence under the Act in respect of any narcotic drug or psychotropic substance etc. for the possession of which he failed to account satisfactorily. Therefore, unless such statutory presumption is rebutted by the accused during the course of trial, there would be a prima facie presumption that the accused had committed the offence under the Act, if he is found to have possessed the contraband drug and substance, and if he fails to account satisfactorily, as contemplated in the said provision of Section 54. An anomalous situation would arise if a non-compliance or delayed compliance of Section 52A is held to be vitiating the trial or entitling the accused to be released on bail, though he is found to have possessed the contraband substance, and even if the statutory presumption is not rebutted by him. Such could not be the intention of the legislature.

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36. At this stage, we must deal with the recent judgments in case of Simarnjit v. State of Punjab, (Criminal Appeal No. 1443/2023), in case of Yusuf @ Asif v. State (2023 SCC OnLine SC 1328), and in case of Mohammed Khalid v. State of Telangana ((2024) 5 SCC 393) in which the convictions have been set aside by this Court on finding non-compliance of Section 52A and relying upon the observations made in case of Mohanlal. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. Therefore, we have considered the legislative history of Section 52A and other Statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or non-compliance of Section 52A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in case of Pooran Mal and Baldev Singh must take precedence over any observations made in the judgments made by the benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.

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39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.” (Emphasis supplied)

22.From the above exposition of law, it is clear that the underlying object behind Section 52A of the NDPS Act and the Standing Order(s) / Rules thereunder is only to provide for a mechanism and procedure for the safe and early disposal of narcotics substances and seized contraband to prevent such substances from endangering lives due to prolonged storage, ceasing to be of any evidentiary value due to degradation or spoilage, or from falling into wrong hands or being recirculated into the market due to theft etc.

23.Although it is true that Chapter V of the NDPS Act more particularly, Section(s) 42 to 57 form a unique scheme of provisions that prescribe several procedural safeguards and conditions that have to be mandatorily adhered to, right from the process of conducting search till the seizure and recovery of the contraband, its safe-keep and handling, yet it does not mean that a mere delay or non-compliance of the same, would result in the trial being vitiated, or the entire case of prosecution crumbling.

24.What is discernible from the various decisions referred to by us, is that mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not by itself render the trial vitiated or into an automatic acquittal. In all instances where this Court set-aside the order of conviction, it did so not solely for the reason that there was a violation of Section 52A but because of and on the strength of the other discrepancies or shortcomings in the prosecution’s case that rendered it doubtful. In Jarooparam (supra) the order of acquittal had been upheld as the independent witnesses had also turned hostile and not supported the case of the prosecution. Similarly, in Mangilal (supra) aside from the non-compliance of Section 52A, the order of conviction was held unsustainable as some of the witnesses to the seizure either turned hostile or were not examined at all and due to discrepancies in the very case of the prosecution. In Mohammed Khalid (supra) also, the conviction was set-aside as the FSL report was found to be very doubtful and in complete contradiction of the seizure that had taken place. Thus, this Court whilst setting aside the order of conviction has consistently looked for something more than just a mere non-compliance of the procedure under Section 52A that renders the case of the prosecution doubtful.

25.In Noor Aga (supra) the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

“107. The seal was not even deposited in the malkhana. As no explanation whatsoever has been offered in this behalf, it is difficult to hold that sanctity of the recovery was

ensured. Even the malkhana register was not produced.

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108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was 11.20 p.m. PW 1 Kulwant Singh and PW 2 K.K. Gupta, however, stated that the time of seizure was 8.30 p.m. The appellant's defence was that some carton left by some passenger was passed upon him, being a crew member in this regard assumes importance (see Jitendra para 6). The panchnama was said to have been drawn at 10 p.m. as per PW 1 whereas PW 2 stated that panchnama was drawn at 8.30 p.m. Exhibit PA, containing the purported option to conduct personal search under Section 50 of the Act, only mentioned the time when the flight landed at the airport.

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111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note.” (Emphasis supplied)

26. Non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution. However, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case. Such delay or deviation from Section 52A of the NDPS Act or the Standing Order(s) / Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. What is required is that the courts take a holistic and cumulative view of the discrepancies that exist in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinize the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.

27. In such circumstances, particularly where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in adequately proving compliance of the same, it would not be appropriate for the courts to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record. Similarly, irrespective of any failure to follow the procedure laid under Section 52A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

28. In *Khet Singh v. Union of India* reported in (2002) 4 SCC 380 this Court held that the Standing Order(s) issued by the NCB and the procedure envisaged therein is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It further observed that there may, however, be circumstances in which it would not be possible to follow these guidelines to the letter, particularly in cases of chance recovery or lack of proper facility being available at the spot. In such circumstances of procedural illegality, the evidence collected thereby will not become inadmissible and rather the courts would only be required to consider all the circumstances and find out whether any serious prejudice had been caused to the accused or not. Further it directed, that in such cases of procedural lapses or delays, the officer would be duty bound to indicate and explain the reason behind such delay or deficiency whilst preparing the memo. The relevant observations read as under: -

“5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the Rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, the courts would take a serious view and the benefit would be extended to the accused. The offences under the NDPS Act are grave in nature and minimum punishment prescribed under the statute is incarceration for a long period. As the possession of any narcotic drug or psychotropic substance by itself is made punishable under the Act, the seizure of the article from the appellant is of vital importance.

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would

not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused.

There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.” (Emphasis supplied)

29. A similar view as above was reiterated in the decision of State of Punjab v. Makhan Chand reported in (2004) 3 SCC 453 wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

“10. This contention too has no substance for two reasons.

Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of

Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.

11. Secondly, when the very same Standing Orders came up for consideration in *Khet Singh v. Union of India* this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.” (Emphasis supplied)

30. Thus, from above it is clear that the procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer-in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-versa where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s) / Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non-compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in *Noor Aga* (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the

narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in Mohammed Khalid (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in Mangilal (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of brining clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in Noor Aga (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and does not exhaustively lay down the evidentiary rules for proving seizure or recovery, nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in Noor Aga (supra).

33. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The

emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

34. At this stage we may clarify the scope and purport of Section 52A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the magistrate as primary evidence.

35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules / Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word “shall” indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules / Standing Order(s).

36. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed in contravention of Section 52A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a magistrate, which is now contained in sub-section (4) of Section 52A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

37. Section 52A sub-section (4) should not be conflated as a rule of evidence in the traditional sense, i.e., it should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of ‘Primary Evidence’ or ‘Best Evidence’ is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to

pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a magistrate in substantial compliance of the procedure prescribed. This, however, does not mean that where Section 52A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the recovery etc. What Section 52A sub-section (4) of the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on par with the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts the manner of proving possession to only one mode i.e., through such certified inventory, photographs or samples such that all other material are said to be excluded from the ambit of 'evidence', rather it can be said that the provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence.

38. In the present case, the only ground that has been canvassed by the appellant herein is that Section 52A of the NDPS Act and Rule 10 of the NDPS Rules, 2022 had been contravened inasmuch as the investigating officer had allegedly mixed all 73 packets of the seized contraband together and thereafter proceeded to draw two samples of 100-100 gms each from the mixture. This according to the appellant renders the accuracy and reliability of the samples as doubtful. The said ground is being reproduced below: -

“5.4 BECAUSE the investigating officer mixed all 73 packets of the seized contraband (Ganja) and took two samples of 100- 100 gram each from the mixture which is in clear violation of the statutory provisions under Section 52A of the Act, 1985 and Rule 10 of the NDPS Rule 2022 which requires proper sampling and preservation of evidence in a manner that ensures the integrity and originality of the seized material.

BECAUSE this non-compliance of Section 52A of the Act, 1985 and Rule 10 of the NDPS Rules, 2022 creates serious doubts about the accuracy and reliability of the evidence produced by the prosecution, thus vitiating the trial.

BECAUSE the officer incharge mixed all 73 packets of the seized Ganja before drawing samples from each packets, the said irregularity compromises the integrity of the seized contraband and violates the mandatory procedure under Section 52A of the Act, 1985.”

39. The High Court in its Impugned Judgment & Order rightly rejected the said contention on the ground that it was nothing but a bald allegation, and that there was nothing to evince such

contravention.

40. Having gone through the materials on record, we are in complete agreement with the reasoning of the High Court. Although, from the testimony of PW-15 i.e., the officer-in-charge of the police station where the seized substance was forwarded it may appear that the seized substances were simply mixed together without following the procedure of segregating similar packets of same quality and nature into lots and thereafter taking representative samples therefrom, yet a closer reading of the Trial Court's judgment would reveal that the police officers herein had duly followed the procedure prescribed to the letter and spirit.

41. As per Clause 2.5 of the Standing Order No. 1 of 89 i.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40 packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under: -

“2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.”

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn, in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant clause reads as under: -

“2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

43. As aforementioned in the preceding paragraphs, the above Standing Order came to be repealed by the enactment of the NDPS Rules in 2022. However, as per Rule 29 of the aforesaid NDPS Rules, notwithstanding such repeal of the erstwhile Standing Order(s), all actions that were done on the basis of such order or guidelines shall be deemed to have been done under the corresponding provision of these Rules. Furthermore, the procedure that was delineated in Clause(s) 2.5 and 2.8 of the said Standing Order have been reincorporated as Rule 10 and 11 in the NDPS Rules without any significant alteration.

44. The Trial Court in para 34 has clearly observed that all 73 packets that were seized were opened and the contents inside each packet were matched and an identification memo was prepared in that regard. Thereafter, two samples of 100 gm each were prepared by drawing representative samples / mixed samples and thereafter the remaining packets were sealed. The relevant observations read as under: -

“All the 73 packets were opened and the contents inside them were matched and an identification panchnama was also prepared. Two sample packets of 100 grams each were prepared from the mixed ganja, after which two sample packets of 100 grams each and the remaining ganja were filled in 6 plastic bags and sealed and seizure proceedings were carried out.”

45. Thus, it appears that identification test by colour was done, thereafter the 73 packets were bunched into two lots of a maximum of 40 packets each, and representative samples were drawn which were then mixed together to prepare the two sample packets. Thus, it can be hardly be said that there has been any procedural lapse in terms of Section 52A of the NDPS Act, rather it appears that the police have strenuously followed the process prescribed thereunder that was in force at the time of seizure and sampling.

46. Even otherwise, if the contention of the appellants was to be accepted in toto such procedural lapse has absolutely no bearing on the overall case of the prosecution and by extension the conviction of the appellant inasmuch as the entire material on record clearly establishes the recovery and seizure of the ganja at the instance of the accused.

47. Before we close this judgment, we may address one another aspect as regards Section 52A of the NDPS Act. Wherever any non-compliance or contravention of either the provision or the Rules / Standing Order(s) thereunder is alleged, the same must be something tangible and not a mere bald assertion or superficial claim. The accused must impute something palpable to make good its case that there has been non-compliance of the mandate of the said provision.

48. We are conscious of the fact that this Court in Mangilal (supra) held that in a given case, the onus would be on the prosecution to satisfy the court as regards the compliance with the mandate of Section 52A of the NDPS Act. The relevant observations read as under: -

“8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are

both stringent and rigorous and therefore the burden heavily lies on the prosecution. [...]" (Emphasis supplied)

49. However, a close reading of the aforesaid decision reveals that this onus on the prosecution will only encumber once such an issue of non-compliance arises for consideration. Although, we are in complete agreement with the aforesaid observations inasmuch as it would be for the prosecution to establish and prove compliance of Section 52A of the NDPS Act, yet at the same time, we are of the considered opinion, that mere assertion by the accused that there has been non-compliance of the said provision may not be sufficient. The initial burden will always be on the accused to lay down the foundational facts for establishing that there has been a non-compliance of Section 52A of the NDPS Act, either by leading evidence of their own or by relying upon the evidence of the prosecution itself such as by putting direct and specific questions to the police officers and key witnesses. Such burden on the accused to establish contravention of Section 52A of the NDPS Act will only be on the mere preponderance of probabilities, whereas once the foundational facts are established that raises an issue as regards the non-compliance of Section 52A of the NDPS Act, the onus will entirely be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

50. We summarize our final conclusion as under: -

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily

treated as primary evidence as per Section 52A sub-

section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not. (IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act. (VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

51. The appeal, therefore, fails and is hereby dismissed.

52. Pending application(s), if any, stands disposed of.

..... J.

(J.B. Pardiwala) J.

(R. Mahadevan) New Delhi, 06th January, 2025.