

State By Intelligence Officer vs Nishan Abdul Kahder on 30 September, 2020

IN THE COURT OF THE XXXIII ADDL.CITY CIVIL &
SESSIONS JUDGE & SPL. JUDGE (NDPS), BENGALURU.
(CCH.33)

Present : Sri. G.M.SHEENAPPA, B.A., LL.B.,
XXXIII ACC & SJ & SPL.JUDGE (NDPS)
BENGALURU.

DATED: THIS THE 30th DAY OF SEPTEMBER 2020

SPL.C.C. No.231/2016

COMPLAINANT : State by Intelligence Officer, NCB.

(By Special Public Prosecutor)

V/s

ACCUSED : 1. Nishan Abdul Kahder,
R/at: 3rd floor, No.14, 3rd Cross,
Lingappa Block,
HD Deve Gowda Main Road,
RT Nagar Post, Bangalore-560 032.

2. Suraj Palan,
R/at: "Sowjanya" Bennekudru,
Barkur, Udupi District-576 210.

3. Karl D'Cunha,
R/at: Brighton Manor Apartments,
Behind Hotel Surya, Flat No.1A,
Balmatta Road,
Mangaluru-575 001.

4. M.V. Vijeth,
R/at: Srinivasanilaya,
37/1, Aatmananda Colony,
7th Cross, Sultanpalya, RT Nagar,
Bangalore-560 032.

5. Darshithmitha B.K.,Female
D/o. Sh. Kanthraj B.T.,
R/at: No.14/4, 3rd Cross, 3rd Floor,
Lingappa block, Devegowda Road,
R.T. Nagar, Bengaluru-560 032.

(A1 & A4 by Sri KSV., Adv.,
A2 & A3 by Sri.NKS., Adv.,
A5 by Sri.HP., Adv.)

1. Date of Commission of offence: 30.11.2015
2. Date of report of offence: 30.11.2015
3. Arrest of the accused :
A1: 1.12.2015
A2 & A3: 17.12.2015
A4: 20.5.2016
A5: 21.6.2016
4. Date of release of accused on bail:
A1: 5.10.2016
A2 & A3: 8.1.2016
A4: 20.5.2016
A5: 7.10.2016
5. Period undergone in custody: A1 : 10 months 4 days
A2 & 3: 22 days
A4: 16 days
A5: 3 months 16 days
later A1, 3 & 4 were
surrendered and in JC till
date
6. Date of commencing of recording Evidence : 5.7.2019
7. Date of closing of Evidence : 7.9.2020
8. Name of the complainant: Sri Abdul Razaak Haq, IO
9. Offence complained of : U/s.8(c), r/w.Sec.20(b),
21, 22, 23, 27, 27A, 28, 29
& 32B(d) punishable
U/s.20(b), 21, 22, 23, 27,
27A, 28, 29 & 32B(d) of
NDPS Act
10. Opinion of the Judge : Offence not proved
11. Order of sentence : As per final order

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JUDGMENT

The Intelligence Officer, NCB, Bengaluru filed complaint against accused persons in NCB F No.48/1/17/2015/BZU for the offences punishable U/Sec.8(C) R/w.Sec.20(b), 21, 22 23, 27, 27A, 28, 29 & 32B(d) of NDPS Act.

2. Brief facts of the case are as under:

That on 30.11.2015 at about 8.00 am., they received information that one person Nishan Abdul Khadar has kept huge cocaine. A team of NCB officers, reached 3 rd floor, No.14, 3rd Cross, Lingappa Block, H.D.Devegowda Main Road, R.T.Nagar, Bangalore and introduced themselves as officers of NCB and told about the information received. After explaining the legal right of the accused persons to ask for his search to be conducted in the presence of Gazetted officer or Magistrate to which he declined and gave in writing that any of the present NCB officers can take their search and search of their parcels in presence of two independent witnesses. First, parcel with LR No.138888 was opened by independent witness in front of NCB team. On enquiry accused No.1 produced polythene packets it was contained cocaine, seized and on weighing it came out to be 110 grams, LSD Paper blot 2 grams, Hashish 90 grams, MDMA 1.02 grams. Accused No.1 arrested and remanded to judicial custody and further accused Nos.2 to 5 were arrested. Later accused Nos.1 to 5 were enlarged on bail. But complainant preferred Appeals before the Hon'ble Supreme Court in Crl.Appeal No.1018/2019, 1019/2019, 1020/2019 & 1021/2019 against accused Nos.1 to 4 bail orders. The said Appeals were allowed and accused Nos.1 to 4 were directed to surrender forthwith. Again accused No.2 preferred Crl.Petition No.8839/2019 for grant of bail before the Hon'ble High Court on medical grounds and the same was allowed and accused No.2 is enlarged on bail.

3. After taking cognizance registered the case. Accused appeared through their counsel and enlarged on bail. Later on accused Nos.1, 3 & 4 remained absent, hence, their bail bonds are cancelled on 2.8.2019 and they are remanded to judicial custody. Copies of the prosecution papers were supplied to accused Nos.1 to 5 U/Sec.207 of Cr.P.C. After hearing, charge framed against accused Nos.1 to 3 U/Sec.8(c) R/w.Sec.20(b), 21, 22, 27, 28, 29 and 32B(d) of NDPS Act and against accused No.4 & 5 U/s.8(c) R/w. Sec.20(b), 23 and 29 of N.D.P.S. Act and read over and explained to them. Accused pleaded not guilty and claimed to be tried.

4. In support of the case, prosecution has examined P.Ws.1 to 10 and got marked Exs.P1 to P.87 and M.Os.1 to 5 CCH.33 Spl.C.C.231/2016

9. After closure, accused are examined U/Sec.313 of Cr.P.C., they denied the incriminating circumstances appeared against them and not chosen to adduce evidence for their defence.

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5. Heard the arguments on both sides.

6. The points for consideration are as under:

1. Whether the prosecution proves that on 30.11.2015 at about 8.00 am., at 3rd floor, Door No.14, 3rd Cross, Lingappa block, HD Devegowda main road, RT Nagar Post,

Bangalore accused Nos.1 & 5 had illegally possessed 110 grams of cocaine, 0.02 grams of LSD paper blot, 19 grams of Hashish, 1.2 grams of MDMA without licence or permit which is a narcotic drug and accused No.1 along with accused Nos.2 and 3 had sold these drugs to various customers especially students of different colleges thereby accused Nos.1, 2, 3 & 5 have committed the offences punishable U/Sec.8(c) R/w.Sec.20(b), 21, 22, 27, 28, 29 and 32B(d) of NDPS Act?

2) Whether the prosecution proves that on 19.5.2016 at about 13.45 hours accused No.4 came to receive the parcel with LR No., containing drugs contained 2.26 grams of hashish at Pragathi Travels office at RT Nagar near 108 bus stop without licence or permission and thereby accused No.4 has committed the offences punishable U/s.8(c) R/w. Sec.20(b), 23 and 29 of N.D.P.S. Act?

3. What order?

7. My findings on the above points are as under:

Point No.1: In the Negative Point No.2: In the Negative Point No.3: See the final order for the following:

REASONS

8 POINT NO.1 & 2 :□The learned S.P.P. vehemently argued that as per evidence of PWs.1 to 10 and Exs.P.1 to P.87 and M.Os.1 to 9, the prosecution proved the guilt. Learned counsel for accused argued that no mandatory provisions complied and so many contradictions and discrepancies found in the prosecution witnesses.

9. On careful perusal of the materials placed on record, the prosecution mainly relied on the testimonies of P.Ws.3 to 8 & 10.

P.W.3 has stated that on 30.11.2015 at about 8.00 am., he received information that at 3rd floor, No.14, 3rd cross, Lingappa block, HD Devegowda Main road, RT Nagar Post, Bangalore the accused have stored huge amount of cocaine. He reduced the same in writing as per Ex.P5 and sent the same to CW.2. CW.3 gave permission to form team and conduct raid. CW.2 gave permission as per Ex.P6. he 7 CCH.33 Spl.C.C.231/2016 left the office at 9.15 am., and reached the spot at 10.15 am., along with DD kit. He secured panchas at spot informed the information. They went to the house at 3 rd floor and knocked the door. Accused No.1 opened the door. They explained the legal right of the accused persons to be searched before Gazetted officer or Magistrate. Accused agreed to be searched by NCB officers only in his handwriting. The notice issued to accused is at Ex.P7. The accused showed cocaine in a cardboard box. They tested the same in DD kit and confirmed. It weighed 110 grams. They took samples from all the seized items and packed separately. Further seized LSD blots weighing 0.02 grams from the pant pocket of the accused No.1. further seized hashish weighing 19 grams, MDMA weighing 1.2 grams They secured the rental agreement of the said house Ex.P10. They drew mahazar Ex.P1. He prepared three test memo Ex.P8. They issued notice to accused No.1

as per Ex.P9. He took the voluntary statement of accused which is in his handwriting as per Ex.p11. He prepared arrest memo as per Ex.P12. The seized articles were sent to Cw.2 with forwarding memo Ex.p13. Godown receipt is at Ex.P14. Seizure report Ex.P15. He sent the samples to CSFL. Arrest report at Ex.p16. On 3.12.2015 he issued notice to accused No.5 as per Ex.P17. He handed over the record to CW.6 for further investigation. on 31.12.2015 on the instructions of CW.2 he had raided the house of accused No.1 at Batkal. But no incriminating was found.

10. PW.3 in his cross examination has stated that his office hours is from 9.30 am., to 6.00 pm. He do not maintain diary regarding his office work. His officers do not instruct them to follow NCB Mannual. On 30.11.2015 at about 8.00 am., he was in his house. His house is at a distance of 500 meters to his office. He reduced the information in writing in his house itself,. He received the information through phone. He has not taken the carbon copy of Ex.P5. He do not know Nishan Abdul Khadar earlier to this case. He came to know that Nishan Abdul Khadar and Mohammed Anish were witnesses in a NCB case, after filing this case. He denied that before 30.11.2015 he knew Nishan Abdul Khadar. He denied that the informant had not given the full address of accused No.1 and that they 9 CCH.33 Spl.C.C.231/2016 have copied the same from the records. Within 5 minutes he received the information he went to the office. In the office one person in the control room and CW.2 were present. He secured his superior officer immediately to the office. He do not know the distance of the house of CW.2 from office. He gave the information to CW.2. he denied that he has not reduced the information in writing as per Ex.P5 and that he has created later. He has not registered any case after giving Ex.P5 to CW.2. he has not filled Form No.1 when he had gone to office. He denied that CW.2 has not powers to give search warrant to him. He received the search warrant at 8.45 am. He do not know whether there is no entry in his office regarding issue of search warrant. He has shown Ex.p5 and P6 to Cws.3 and 4. he has admitted that he has not taken the signature of the person who is residing as per Ex.p6. He denied that CW.2 has not issued any search warrant as per Ex.P6 and that he has created the same later for the purpose of this case. He has not given any memorandum to CW.2 before leaving the office. CW.3 was coming from the building and CW.4 is the owner of the house in which accused was there. He requested them to act as panchas and issued notices to them but he has not produced before court. When they entered the house accused No.1 opened the door they have not taken his signature on Ex.p5 and P6. He denied that he has not shown Ex.P5 and P6 and that accused No.1 was not at all present in the said house. He denied that they have not issued notice as per Ex.P7 to accused No.1 and that by force they have obtained signature as per Ex.P7(b) in the office. He denied that accused No.1 did not produce the cocaine weighing 110 grams from the cupboard and that he is deposing falsely. He has admitted that they have not clearly mentioned in the mahazar from where and from which pocket the accused No.1 produced the LSD, hashish, MDMA. He denied that accused has not produced the LSD, Hashish and MDMA and that he has not seized the same and marked as S1 to S5 and P1 and that he is deposing falsely. The Mos., were bearing the file No., and further he admitted that after coming to the office they register the case and give No. He denied that he has obtained signatures on the blank papers and then entered the file No., in the office and affixed on Mos. It is true that there is 11 CCH.33 Spl.C.C.231/2016 no separate inventory. He admitted that he has not mentioned that they had obtained the copy of lease agreement and passport. He has stated that they have not seized any items relating to accused No.1 to show that he is residing in the said house. He further volunteers and stated that it is not required. He denied that since accused No.1 is not residing in the said house,

they have not seized any of his items. He denied that they have seized the copy of the passport of accused No.1 from his pocket and wrongly mentioned that it was seized from his house. It is true that he has not given the NCB seal No.3 to Cws.3 and 4 panch witnesses. It is true that they have used the NCB seal No.3 in many cases. He denied that accused No.1 has stated that he used to bring the drugs from one Kavin and sell to college students. It is true that copy of mahazar is not given to panchas and accused No.1. he denied that on 30.11.2015 he has not drawn mahazar Ex.P1 in the house and that they have not seized Mos.1 to 6. he further denied that they have drawn mahazar in his office. He denied that he has not issued any notice to accused No.1 and that accused No.1 voluntarily did not accompany him. He denied that they have forcibly written the voluntary statement as per Ex.P11 of the accused No.1. he has admitted that they have not mentioned the time when the accused No.1 gave the voluntary statement. He has admitted that he has not signed on Ex.P11. He has denied that accused No.1 has not stated any names, they have forcibly added them. He denied that he has not issued arrest memo Ex.P12 and that accused No.1 has not endorsed the same but they have forcibly taken it. It is true that as per Ex.P13 forwarding memo he has only deposited the MOS., to CW.2. he did not produce the accused immediately before CW.2 since he was not arrested. He denied that Ex.P13 to P16 are created for the purpose of this case. He denied that on 30.11.2015 when accused No.1 was going in a car at about 9.30 am., they forcibly arrested him and filed this false case. He has admitted that he has not mentioned in Ex.p15 and P16 regarding the copy sent to his superior. It is true that in Ex.P5 the name of accused No.5 is not mentioned. It is true that he personally not seen the accused No.5 when they raided the house. He has not issued notice to accused No.5 directly during investigation. He denied that accused No.5 13 CCH.33 Spl.C.C.231/2016 was not residing in the house which they raided and that accused No.5 had vacated the said house one year prior to the incident and that he forcibly obtained the lease agreement from CW.4. Ex.P10 he has not obtained any document relating to accused No.5. he denied that they have not informed about the arrest of accused No.1 to accused No.5. He denied that forcibly they have obtained the endorsement from accused No.1 on Ex.P12. Till completion of investigation no where they have mentioned regarding involvement of accused No.5 in the said case. He denied that in Ex.P1 mahazar they have not mentioned that accused No.1 is residing in the house of accused No.5. he denied that accused No.5 had consumed drugs for one time and later she used to help accused No.1 in drug dealings. He has not seen accused No.5 during investigation. He has not arrested accused No.5 as CW.4 had told him that she had gone for work. He admitted that during mahazar he has not recorded the statement of CW.4. he had admitted that in the mahazar it is not mentioned that accused No.5 had gone to work and return in the evening. He denied that though he knew that as on 30.11.2015 accused No.5 was not residing in the CW.4 house he has issued Ex.P15. He denied that accused No.1 in his voluntary statement has not stated that accused No.5 is leaving in the CW.4 house. It is true that before recording the voluntary statement of accused No.1 as per Ex.P11 he has not mentioned the names of other accused persons.

11. P.W.5 has stated that on 4.12.2015 she received the records for further investigation from CW.1. On 4.12.2015 she issued summons to CW.3 as per Ex.P3. She issued summons to accused No.5. on 11.12.2015 CW.3 came to her office and his voluntary statement as per Ex.P2. She gave information to Suratkal Police station to arrest accused No.1. Likewise she has sent a letter to CCB through Superintendent. On 15.12.2015 Cw.5 came to her office and gave a letter as per Ex.P22. On 16.12.2015 accused No.5 gave voluntary statement as per Ex.P23. Accused No.5 has stated that she

used to consume drugs since 2014. accused NO.5 has written herself on Ex.p22 and P23. P.W.5 has further stated that on 16.12.2015 she gave summons to accused Nos.2 and 3 as per Ex.p24 and 15 CCH.33 Spl.C.C.231/2016 P25. Accused Nos.2 and 3 have given their voluntary statement in their handwriting as per Ex.P26 and P27. Email printout of accused No.2 and 3 is at Ex.P28. She arrested them as per arrest memo Ex.P29 and P30. Success report sent to her superior as per Ex.P31. On 29.1.2016 she received CFSL report as per Ex.P20. She sent letter to banks and received reply as per Ex.P32, P322, P35 and P36. The debit card of accused No.1 is at Ex.P34. She issued summons to CW.4 owner as per Ex.P37. On 27.4.2016 CW.4 came to her office and gave statement as per Ex.P4 and stated that accused No.1 is residing in his house. She sent letter to Passport office and received reply as per Ex.p38. Letter sent to ICICI bank regarding accused No.3 is at Ex.P39 and reply received is at Ex.P40. On 19.5.2016 she received information regarding accused No.4 coming to the parcel office at RT nagar. She informed the same to CW.2 and obtained permission Ex.P41 and formed a team and went near Pragathi travels along with Cws.8 and 9 and verified the parcel No. it was in the name of accused No.4. at about 2.00 pm., accused No.4 came to receive the parcel. They arrested accused No.4 after receiving the parcel. They opened the parcel and found charas weighing 2.26 grams. She drew mahazar Ex.P42. She gave notice to accused No.4 as per Ex.p43. Then she went to the house of accused No.4 and conducted raid but they did not find any thing. They drew mahazar Ex.P44. She issued summons to accused No.4 as per Ex.P45. Then she came to the office and sent the seized article to CW2 along with forwarding memo Ex.p46. CW,2 gave godown receipt as per Ex.P47. Accused No.4 gave his voluntary statement in his handwriting Ex.p48. She arrested accused No.4 as per arrest memo Ex.P49. Seizure report Ex.p50, arrest report Ex.P51. she sent the sample to CFSL and received the report Ex.p9. On 23.5.2016 she issued summons to accused No.5 Ex.p52. Received acknowledgement from CFSL Ex.P53. Pragathi travels register copy at Ex.p54. Two receipts Ex.P55. On 21.6.2016 accused No.5 came to her office and gave voluntary statement Ex.P57 in her handwriting. She issued arrest memo Ex.P58 and arrested the accused No.5. arrest report Ex.P59. She sent letters to banks regarding bank details of accused Nos.4 and 5 and received reply as per Ex.P60 to P65. She received CFSL letter Ex.P66.

17 CCH.33 Spl.C.C.231/2016 Forwarding memo is at Ex.P67. Report is at Ex.P68. Summons issued to CWs.8 and 9 are at Ex.P69 & 70. Cws.8 and 9 gave their statements in kannada as per Ex.P71 and P72. She sent letter to bank as per Ex.p73 and received reply Ex.P74. Further she has sent letters to bank as per Ex.p75 to P77. 4 debit cards are at Ex.P78 to Ex.P81. Bank letters Ex.P82 to P86.

12. PW.5 in her cross examination has stated that when she received the case records from PW.3 the Mos., were in the godown. It is true that PW.3 after issuing notice U/s.50 of NDPS Act has conducted personal search of accused No.1. He denied that at the time of seizure they have not seized credit cards and debits cards. It is true that at the time of personal search all the belongings of accused No.1 has to be mentioned. She has denied that they have created the Jamatalashi afterwards for the purpose of this case. She denied that there are no documents to show that accused No.1 has transacted the bank accounts of accused No.4. It is true that they have not produced any document to show that the phone no., belongs to accused No.1. he has not enquired the persons who have deposited amount to the account of accused No.1. She denied that accused No.5 has not done any transaction with respect of the amount of accused No.4. before 19.5.2016 they had not treated accused No.4 as accused. On 19.5.2016 they received a telephone call to him. First the person had

called to control room and asked to talk to any officer. Later she received the call. The said fact is not mentioned in Ex.P.41. She has typed the information while receiving on telephone. She do not know when her superior officer received the information. She denied that on 19.6.2016 she has not received any information and that they have intentionally fixed accused No.4 in this case and produced before court. On 19.5.2016 she has not written who all the officers went to Pragathi Travels. It is true that when she went to Pragathi Travels one Venkataraman and Prabhakar Nayak were working in the said travels. It is true that except CW.8 and 9 she has not secured the local public to act as panchas. It is true that she has not shown the information received by her to Cws.8 and 9. in the Pragathi travels on seeing the register they confirmed the no., of the 19 CCH.33 Spl.C.C.231/2016 parcel. She denied that when they were at Pragathi travels accused No.4 did not come to the said travels and received the parcel. It is true that as per mahazar accused No.4 enquired about the parcel. It is true that in front of accused No.4 they have opened the parcel at Pragathi travels. They have not taken the computer print out for having received the parcel. She denied that as per Ex.P42 accused No.4 has not signed in any register and received the parcel. She denied that they have obtained signature of accused No.4 forcibly on Ex.P54 and that they have not drawn any mahazar, not seized any items and that she is deposing falsely. She denied that accused No.4 did not come to Pragathi Travels and received any parcel. It is true that they have not written the reason for having taken accused No.4 to his house at 4.00 pm. She has admitted that they have not shown the copy of the mahazar to the parents of accused No.4 and obtained their signature. She denied that they have created Ex.P46, 47, 50 and P51 for the purpose of this case. She denied that accused No.4 has not given any voluntary statement , that she has forcibly written and obtained his signature. It is true that on 16.12.2015 they issued notice to accused Nos.2 and 3 and on the same day they have arrested them. She has issued notice to accused Nos.2 and 3 in her office that accused Nos.2 and 3 had come to her office in another case. She denied that accused Nos.2 and 3 were arrested in another case but not in this case. She has denied that they have not given time for accused No.2 and 3 and that they have not given their voluntary statements as per Ex.P26 and P27 before her and that she has taken it forcibly. She has denied that accused Nos.2 and 3 have given complaint before court against her. She do not know who has taken the printout of email correspondence of accused Nos.2 and 3. she denied that forcibly she has taken the signature of accused No.2 on Ex.P28. She has denied that they have created the email correspondence. She has denied that accused No.3 was working at Forms Technology since 2006 to 2013 and that the salary has been credited to his bank account and that after 2013 he was working was car broker and tour guide in ship company and earned lot of money. She denied that the amount in the bank account of accused is not due to the narcotic drugs business. She has stated that she has not 21 CCH.33 Spl.C.C.231/2016 listed the documents given by earlier officer. PW.3 has not handed any case diary to her. She has also not prepared any case diary regarding further investigation. It is true that when she received the records on 4.12.2015 the name of accused No.5 was not mentioned. It is true that on 8.12.2015 she issued summons to accused No.5. It is true that on 16.12.2015 accused No.5 gave her statement as a witness but not as an accused. On 23.5.2016 they issued summons to accused No.5 to appear on 2.6.2016 but they have not mentioned the reason. Again on 6.6.2016 they issued summons to her to appear on 14.6.2016 without mentioning the reason. It is true that accused No.5 gave her statement on 16.12.2015 as per Ex.P23 and that she had not told that she would give further information. She has not put questions to accused No.5 when she gave statement as per Ex.P57. She denied that on 21.6.2016 accused No.5 did not give her voluntary statement before her. After

recording the voluntary statement of accused No.5 she has not mentioned separately that she is also an accused and that she had not informed to court also. She denied that Ex.P57 is obtained by threatening accused No.5. she denied that Ex.P57 is not genuine. It is true that she has not given the copy of arrest memo to accused No.5. she denied that without any reason she has arrested accused No.5. it is true that she has not mentioned the amount earned through drugs transactions based on the bank statement of accused No.5. she denied that Ex.P85 bank statement is not related to this case. It is true that in Ex.P85 it is not mentioned through drugs the amount received. She denied that on 15.12.2015 when accused No.5 came to her office she had told that she do not know any thing about this case. She further denied that accused No.5 did not tell that she was consuming drugs from 14.1.2014. further denied that accused No.1 was not consuming drugs since December 2013. she further denied that from 30.11.2015 accused No.5 is not residing with accused No.1 in the Ex.P1 address. She further denied that on 27.4.2016 CW.4 has not given any statement before her as per Ex.P4 and that CW.4 had told that accused No.5 is a tenant under him. She denied that Ex.P4 document is a created document. She further denied that accused No.4 23 CCH.33 Spl.C.C.231/2016 has not given any statement before her and that there is no nexus between accused No.1 and 5.

13. PW.7 has stated that on 21.6.2016 CW.6 produced one lady by name Dashmitha. On 23.6.2016 they arrested her as per sec.57 NDPS Act and gave report Ex.P59. In his cross examination he has stated that he has not recorded the statement of Dashimtha. He denied that Ex.P59 is a forged document and that he along with CW.6 has created the same for the purpose of this case. He further denied that though accused No.5 is not at all involved in this case they have falsely implicated her.

14. PW.8 has stated that on 30.11.2015 at about 8.00 am., CW.1 informed him that accused No.1 has stored huge narcotic drugs in his house. He permitted him to raid as per Ex.P5. He issued search authorization as per Ex.P6. He gave Seal No.3 to Cw.1 and mentioned the same in moment register. CW.1 submitted the forwarding memo along with seized articles as per Ex.P13. Godown receipt is at Ex.P14. CW.1 gave seizure report as per Ex.P15 and arrest report Ex.P16. He wrote letter to CCB office, ACP Surathkal PS, RT Nagar PS regarding offences committed by accused No.1. on 17.12.2015 CW.6 gave report regarding arrest of accused Nos.2 and 3. He issued search authorization to conduct raid of accused Nos.1 to 3 houses and letter to CW.1. he received CFSL report and confirmed that the seized articles are Charas, cocaine and LSD. On 19.5.2016 CW.6 informed about the information received by her regarding accused No.4 coming to Pragathi travels to receive parcel. He gave permission to raid as per Ex.p41. He gave seal No.3 Cw.6 sent forwarding memo and he issued godown receipt as per Ex.P47. Seizure report and arrest report ExP50 and P51. He sent samples to CFSL and received acknowledgement Ex.P53.

15. PW.8 in his cross examination has stated that his office timings is from 9.30 am., to 6.00 pm. He has stated that he do not mention the timings in any register. He do not remember on 30.11.2015 at what time he reached office. On that day he received information at 8.00 am., from Cw.1. Cw.5 has not handed over NCB seal No.1 along with Ex.P5.

25 CCH.33 Spl.C.C.231/2016 Further the time of submitting Ex.P5 is also not mentioned. He denied that on 30.11.2015 CW.1 did not give any information regarding accused No.1. he further denied that Ex.P5 is created later for the purpose of this case and obtained his signature. He denied that he has

no powers to issue Ex.P6. He further denied that Ex.P6 is created document as per Ex.p6 there have not conducted any search. When CW.1 produced the forwarding memo and Mos., accused were not produced. He has not signed on Ex.P13. He denied that Ex.P13 to P16 are created documents. It is true that Mangalore Police and RT Nagar Police have not given any information regarding the crimes of accused No.1. he denied that Ex.P41 is created later and obtained his signature by CW.6. he denied that he has signed Ex.p46 and P47 at the time of filing complaint. He denied that when accused Nos.2 and 3 appeared before him intentionally he has arrested them.

16. PW.10 has stated that on 19.5.2016 at about 1.40 pm., NCB officials came to his office and asked about a parcel from Mangalore. He checked the same in the computer. Then a person came at 2.00 pm., and asked about the parcel, NCB officials apprehended him. On opening the parcel there was some drugs. The accused told that he has taking this parcel on behalf of his friend. The said drug is about 2 grams. He signed on mahazar Ex.P42. The letter issued to him is at Ex.P43. Test memo is at Ex.P87. In his cross examination he has stated that when any parcel is received they would write the address of the person who receives it and take his signature. When the NCB officials took the parcel the same was not signed in the register. He has not taken the signature of one Vigith in the register. NCB officials have issued notice to him. He do not know what is written in the said notice. He do not know what is written in mahazar but he has but 3□4 signatures. When the NCB officials left his office they had given the copies of the documents. He denied that MO.9 is not the cover received by him. He denied that NCB officials forcibly took his signature on the documents. He denied that on the say of NCB officials he is deposing falsely.

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17. PW.9 has stated that on 24.9.2016 he received sealed brown colour cover bearing seal 3. he conducted various tests on the sample article and issued report Ex.P68 and opined that the sample article responded positive for presence of charas. In his cross examination he has stated that after conducting the tests he prepared report. He has done three various tests but he has not written each test separately. He denied that he has not personally conducted any tests and issued false report and that he is deposing falsely.

18. P.W.4 C.F.S.L officer stated that he conducted various tests on the sample articles and issued report Ex.P20 and opined that the presence of cocaine, LSD, Propanediamine and charas. In his cross examination denied the suggestion that he has not personally conducted tests on the sample articles and issued false report. Of course as per the evidence of P.W.4, the sample articles may respond positive for cocaine, LSD and charas, but the said sample articles are seized from the possession of the accused persons is not proved as none of the independent panch witnesses i.e., PWs.1, 2 and 6 have supported the case of the complainant.

19. This is all about oral evidence. There is lot of documentary evidence also on record which also has so many facts to offer. Ex.P1 mahazar is not proved as PW.1 independent panch witnesses has not supported the case. Ex.P2 is the statement of one Abdul Razzak, Ex.P3 is summons, Ex.P4 is the statement of PW.2 which is contrary to his own evidence. Ex.P5 & P41 reveals that C.W.1 & CW.6 have reduced the information in writing. But it is difficult to believe that whether it is reduced in

writing immediately or created later. Ex.P6 search authorization, Ex.P7 Notice U/s.50 of NDPS Act issued to accused No.1. Where in the I.O has asked whether the personal search of the accused can be conducted before Gazetted officer or Magistrate. But the answer given by the accused is that "any NCB officer can take my search" is not admissible. Sec.50 Part 1 of the NDPS Act does not provide for it and when such option is given it would frustrate the provisions. In this regard, the learned counsel for the accused relied on 29 CCH.33 Spl.C.C.231/2016 the decision reported in LAWS (SC) 2018(4) 156, Criminal No.273/2007 D.D.27.4.2018 in Arif Khan Vs., Stat of Uttarakhand. The facts and circumstances of the above decision is aptly applicable to the case on hand. Ex.P8 test memo, Ex.P9 summons, Ex.P10 is the rental agreement which clearly shows that accused No.5 was residing in the above said address, Ex.P11, P23, P26, P27, P48 & P57 voluntary statements of accused persons have no presumptive value and it is not admissible in evidence as it is recorded after search, seizure and arrest. No further contraband seized on the basis of their statements. Ex.p12 arrest memo, Ex.p13 forwarding memo, Ex.P14 godown receipt, Ex.P15 seizure report, Ex.P31 arrest report, Ex.P50 & P51 seizure report and arrest report, Ex.P59 arrest report submitted U/s.57 of NDPS Act for success of raid. In the absence of complying mandatory provisions U/s.42 and 50 of NDPS Act, compliance U/s.57 is not a valid compliance. Compliance with provisions of Sec.57 does not dispense compliance with requirement of Ss.42 and 50. Ex.P16 arrest report, Ex.P17 summons, Ex.P18 panchanama for having searched the house of accused No.1 at Mangalore. But nothing incriminating has been found during the said search. Ex.P19 letter of FSL, Ex.p20 FSL report, Ex.p21 letter of FSL, Ex.P22 letter of accused No.2, Ex.P24, P25 summons, Ex.P28 email copy, Ex.P29 & P30 arrest memo, Ex.p32 letter sent to HDFC bank, Ex.P33 reply given by the said bank, Ex.P34 & 35 letters sent to Axis Bank and ICICI banks, Ex.P36 reply of ICICI bank, Ex.P37 summons, Ex.P38 letter written to Ministry of External affairs, Ex.P39 letter to ICICI bank, Ex.P40 reply, Ex.P42 mahazar is not proved as PW.6 the panch witness has not supported the case of complainant. Ex.P43 notice issued to accused No.4 where in the accused No.4 has only put his signature at Ex.P43(b) but he has not written any thing regarding his search. Ex.P44 mahazar conducted during the search of house of accused No.4. But nothing incriminating is found. Ex.p45 summons, Ex.P46 forwarding memo, Ex.P47 godown receipt, Ex.P49 arrest memo, Ex.P52 summons, Ex.P53 letter to FSL, Ex.P54 register copy of Pragathi Travels, Ex.P55 receipt, Ex.P46 notice to accused No.5 wherein she has also stated that she do not required to be searched before gazetted officer or Magistrate which is not admissible 31 CCH.33 Spl.C.C.231/2016 in NDPS Act. Ex.P58 arrest memo, Ex.P60 to P65 letters sent to various banks, Ex.P66 letter to CFSL, Ex.P67 letter from CFSL, Ex.P68 CFSL report, Ex.P69 & P70 summons, Ex.P71 statement of PW.6, Ex.P72 statement of PW.10, Ex.P73 to P86 are the documents pertaining to letters sent to banks, debit cards of accused and Ex.P87 is the test memo.

20. The learned counsel for the accused relied on a number of decisions reported in AIR 2013 Supreme Court 357 in the case of Krishan Chand Vs., State of Haryana wherein it is held that:□(A) Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Ss 42, 50, 57 - Search - Pre search requirement of recording information received and sending it to superior officer□Demands exact and definite compliance as opposed to substantial compliance - So is requirement of S.50 -

Compliance with provisions of S.57 does not dispense compliance with requirements of Ss.42 and 50.

2002 Crl.L.J. 4502 in the case of Koyappakalathil Ahamed Koya Vs., A.S.Menon and another, wherein it is held that:□

(c) Narcotic Drug and Psychotropic Substances Act (61 of 1985), S 50 - Search and seizure□ procedure□ Right given to accused to get searched in presence of Gazetted officer or Magistrate -fact that members of raiding party informed accused that Gazetted Officer is present in raiding party□ It is allurement given to accused prompting him for expressing no objection for being searched in presence of said Gazetted officer - An not for asking to be searched in presence of any other Gazetted officer or Magistrate -Sai procedure is against safeguard provided by S.50 to accused. 2011 Crl.L.J. 680 in Vijaysinh Chandubha Jadeja Vs., State of Gujarat wherein it is held that:□ "NDPS Act S50 - search and seizure - in presence of Gazetted officer or Magistrate - imperative for empowered officer to inform suspect about existence of his right that if he so requires, he shall be searched before Gazetted officer or Magistrate - failure to inform suspect about existence of his right would cause prejudice to 33 CCH.33 Spl.C.C.231/2016 him - in case he so opts, failure to conduct his search before Gazetted officer or Magistrate, may not vitiate trial - but would render recovery of illicit article suspect and vitiate conviction and sentence of an accused.

"(C) a mere enquiry by said officer as to whether suspect would like to be searched in presence of a Magistrate or a Gazetted Officer -

cannot be said to be substantial compliance with mandate of section."

2009 Crl.L.J. 4299 in Karnal Singh Vs., State of Haryana, (2007) 1 Supreme Court Cases (Cri) 744 in Ritesh Chakarvarti Vs., State of MP.

AIR 1995 SC 244 in Ali Mustaffa Vs., State of Kerala, wherein it is held that:□ "(B) NDPS Act S.20, 50 - unlawful possession of contraband - proof - search and seizure made in contravention of S.50 - contraband seized as result of such illegal search - cannot be used as evidence of unlawful possession of contraband." (2007) 1 Supreme Court Cases 450 in Dilip and another Vs., State of MP wherein it is held that:

"NDPS Act - Sec.50, 42 and 57 search, seizure and arrest - court below recording a judgment of acquittal, holding that the search and seizure was vitiated in law as mandatory statutory requirements contained in Ss.50 and 42 were not complied with - Also, that the seizure witness did not support the prosecution case and the informant also not complying with the requirement of S.57 of NDPS Act. Further, that the sealing of contraband materials were not carried out in accordance with law.

1999 Supreme court 2378 in State of Punjab Vs., Baldev Singh wherein it is held that:□ NDPS Act - search - accused informed of his right to be searched before Gazetted Officer or Magistrate and exercising his option - empowered officer however failed to conduct his search before Gazetted officer or Magistrate - may not vitiate trial - but render his conviction unsustainable because of inherent prejudice caused. [Further relied on 2013 AIR SCW 312 Sukhdev Singh Vs., State of Haryana, 1998 SCC

(Cri) 1516 Namdi Francis 35 CCH.33 Spl.C.C.231/2016 Nwazor Vs., Union of India and another, 2013 Crl.L.J. 474 suresh and others Vs., State of Madhya Pradesh, AIR 2005 SC 2221 State of Rajasthan Vs., Ram Chandra, 002 (144) ELT 279 (Bom) Mohamed Rashid Mohamedi Vs., V M dosi, NCB, Mumbai, 2008 (1) SCC (cri) 415 Directorate of Revenue and another Vs., Mohammed Nisar Holia, AIR 2002 SC 1810 Beckodan Abdul Rahiman Vs., State of Kerala, 2002 SCC (Cri) 172 Bahadur singh Vs., State of MP, 1992 Crl.L.J 3034 Shankar Raju Banglorkar Vs., State of Goa, AIR 1954 SC 4 and AIR 1956 SC 217 Aher Raja Khima Vs., State of Saurashtra.

The facts and circumstances of the above decisions are aptly applicable to the case on hand.

21. Further the learned counsel for accused No.5 has relied on the decisions reported in Crl.A.No.504/2020 Gangadhar Vs., State of MP, 2008(16) SCC 417 Noor Aga Vs., State of Punjab, 2011(12) SCC 298 Nirmal Singh Pehlwan Vs., Inspector of Customs, 2009(12) SCC 161 Union of India Vs., Bal Mukund and 2018(8) SCC 271 Surinder Kumar Khanna Vs., IO DRI.

On careful reading of above decisions, facts, circumstances and ratio is applicable to case on hand, as prosecution has not followed mandatory provisions.

22. Learned SPP argued that option given to accused when he chosen to be searched by empowered officer, the question of producing before Gazetted Officer does not arise. Hence, it is valid compliance.

He relied on a decision reported in 2010 SAR (Crl.)806 in Leela Gupta & others Vs. State of UP and others wherein it is held that option to chose is given U/s.50, it is communication of right either to accept or reject. By giving option the appellants were apprised of their right. Recovery has been made from the vehicle. Provision of Sec.50 was not required to be complied.

The facts and circumstances are not applicable to the case on hand.

2015 SAR (Crl.) 597 in Kulwinder Singh and another Vs., State of Punjab wherein it is held that 37 CCH.33 Spl.C.C.231/2016 evidence of the official witness are trust worthy and credible, there is no reason not to rest the conviction on the basis of their evidence.

The facts and circumstances are not applicable to the case on hand as testimony of official witnesses is inconsistent to each other and not trust worthy and reliable.

(2009) 8 SCC 539 Karnail Singh Vs., State of Harayana wherein it is held that in special circumstances when the officer is on the move and recording of information is not particle prior to search and seizure, the requirement of writing down and

conveying information to superior officer, held, may be postponed by reasonable period which may even be after the search, entry and seizure.

The facts and circumstances are not applicable to the case on hand.

Further relied on 2020 SAR (Cri) 553 SC, AIR 2016 SC 3193, (2011) SCC 609, 2020 SAR (cri) 59, AIR 2014 SC 1745, 1990 Cr.L.J.563, 2003 Cr.L.J. 356 and 2020 SAR (cri) 199 The facts and circumstances of the above decisions are not applicable to the case on hand.

23. For the above, in the absence of corroborated evidence the testimony of prosecution witnesses cannot be reliable to prove the guilt of the accused Nos.1 to 5. So many considerable contradictions and discrepancies found in the prosecution witnesses. There is no link of chain found in the circumstantial evidence. Serious doubt arises in the mind of the Court to believe that accused have committed the offence. So accused are entitled for the benefit of doubt. Hence prosecution has utterly failed to prove the guilt beyond reasonable doubt. Accordingly, I answer Point No.1 & 2 in the 'Negative'.

24. Point No.4: In the result, following:

ORDER Acting under Section 235(1) of Cr.P.C. accused Nos.1, 2, 3 & 5 are acquitted for the offences punishable under Sections 8(c) R/w.Sec.20(b), 21, 22, 27, 28, 29 and 32B(d) of 39 CCH.33 Spl.C.C.231/2016 NDPS Act and accused No.4 is acquitted for the offences punishable U/s. 8(c) R/w.

Sec.20(b), 23 and 29 of N.D.P.S. Act.

Bail bond of the accused Nos.2 & 5 shall stands cancelled.

Accused Nos.1, 3 & 4 are set at liberty if they is not required in any other case.

M.Os.1 to 6 & 9 bulk and sample are ordered to be returned to the complainant to produce before Drug Disposal Committee for disposal in accordance with law.

M.Os.7 & 8 packing material and SIM card are ordered to be destroyed.

Accused Nos.1 to 5 are released U/Sec.437(A) of Cr.P.C., on execution of bond for Rs.50,000/□each with a surety for likesum, for the purpose of his appearance before Appellate Court, in the event of filing of any appeal by the State. [Dictated to the Stenographer, transcript computerized by him, revised, corrected, signed and then pronounced by me in Open Court on this the 30th day of September 2020) (G.M.SHEENAPPA) XXXIII ACC & SJ & SPL.JUDGE (NDPS) BENGALURU.

ANNEXURE

1. List of witnesses examined for the:

(a) Prosecution:

P.W.1 : Abdul Razaak Haq
P.W.2 : C.K. Gopinath
P.W.3 : Vivek Kumar Pande
P.W.4 : S.L. Rasool
P.W.5 : Smt. Kumudavalli
P.W.6 : Prabhakar Naik
P.W.7 : V.V. Singh
P.W.8 : Pankaj Kumar Dwivedi
P.W.9 : Sathish Rajaram Nailkar
P.W.10 : Venkataramana

(b) Defence :

NIL

List of documents exhibited for the:

(a) Prosecution:

Ex.P.1 : Panchanama
Ex.P.1 (a), (b), (c) : Signatures
& (d)
Ex.P.2 : Statement of PW.1
Ex.P.2 (a) & (b) : Signatures
Ex.P.3 : Summons
Ex.P.3 (a) : Signature
Ex.P.4 : Statement of PW.2
Ex.P.4 (a) & (b) : Signatures
Ex.P.5 : Information statement of PW.3
Ex.P.5 (a), (b) & : Signatures
(c)
Ex.P.6 : Permission letter
Ex.P.6 (a) : Signature
Ex.P.7 : Arrest report
Ex.P.7 (a), (b), (c) : Signatures
& (d)

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Ex.P.8 : Test Memo
Ex.P.8 (a) : Signature
Ex.P.9 : Summons
Ex.P.9 (a) : Signature
Ex.P.10 : Rental Agreement
Ex.P.11 : Statement of Nishan Abdul Khadar
Ex.P.11 (a) : Signature

Ex.P.12	:	Arrest Memo
Ex.P.12 (a)	:	Signature
Ex.P.13	:	Forwarding Memo
Ex.P.13 (a)	:	Signature
Ex.P.14	:	Godown Receipt
Ex.P.14 (a)	:	Signature
Ex.P.15	:	Seizure Report
Ex.P.15 (a) & (b)	:	Signatures
Ex.P.16	:	Arrest Report
Ex.P.16 (a) & (b)	:	Signatures
Ex.P.17	:	Summons
Ex.P.17 (a)	:	Signature
Ex.P.18	:	Panchanama
Ex.P.18 (a)	:	Signature
Ex.P.19	:	Forwarding of examination report and survey assessment
Ex.P.19 (a)	:	Signature
Ex.P.20	:	Examination Report
Ex.P.20 (a)	:	Signature
Ex.P.21	:	Acknowledgment
Ex.P.22	:	Letter
Ex.P.22 (a) & (b)	:	Signatures
Ex.P.23	:	Statement of accused No.5
Ex.P.23 (a) & (b)	:	Signatures
Exs.P.24 & P.25	:	Summons
Ex.P.24 (a)	:	Signature
Ex.P.25 (a)	:	Signature
Exs.P.26 & P.27	:	Voluntary statement of A2 & A3
Ex.P.26 (a)	:	Signature
Ex.P.27 (a)	:	Signature
Ex.P.28	:	E-mail document
Ex.P.29	:	Arrest Memo
Ex.P.29 (a) & (b)	:	Signatures
Ex.P.30	:	Arrest memo
Ex.P.30 (a) & (b)	:	Signatures
Ex.P.31	:	Arrest Report
Ex.P.31 (a)	:	Signature
Ex.P.32	:	Account details to HDFC Bank
Ex.P.33	:	Return notice from HDFC Bank
Ex.P.34	:	Account details of Axis Bank
Ex.P.35	:	Account details of ICICI Bank
Ex.P.36	:	Request letter
Ex.P.37	:	Summons
Ex.P.37 (a)	:	Signature
Ex.P.38	:	Forwarding the passport details
Ex.P.39	:	Account details of ICICI Bank
Ex.P.40	:	Furnishing details of account of A3
Ex.P.41	:	Information letter
Ex.P.41 (a) & (b)	:	Signatures

Ex.P.42	:	Panchanama
Ex.P.42 (a), (b) & (c)	:	Signatures
Ex.P.43	:	Notice
Ex.P.43 (a), (b) & (c)	:	Signatures
Ex.P.44	:	Panchanama
Ex.P.44 (a)	:	Signature
Ex.P.45	:	Summons
Ex.P.45 (a) & (b)	:	Signatures
Ex.P.46	:	Forwarding memo
Ex.P.46 (a)	:	Signature
Ex.P.47	:	Godown receipt
Ex.P.47 (a)	:	Signature
Ex.P.48	:	Voluntary statement of A4
Ex.P.48 (a), (b) & (c)	:	Signatures
Ex.P.49	:	Arrest memo
Ex.P.49 (a) & (b)	:	Signatures
Ex.P.50	:	Seizure report
Ex.P.50 (a) & (b)	:	Signatures
Ex.P.51	:	Arrest report
Ex.P.51 (a) & (b)	:	Signatures
Ex.P.52	:	Summons
Ex.P.52 (a)	:	Signature
Ex.P.53	:	Acknowledgment
Ex.P.54	:	Copy of Pragathi Travels registers
Ex.P.55	:	Two receipts
Ex.P.56	:	Notice
Ex.P.56 (a)	:	Signature
Ex.P.57	:	Voluntarily statement of A5
Ex.P.57 (a), (b) & (c)	:	Signatures
Ex.P.58	:	Arrest memo
Ex.P.58 (a) & (b)	:	Signatures
Ex.P.59	:	Arrest report

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Ex.P.59 (a) & (b)	:	Signatures
Ex.P.60	:	Statement of SB A/c of A5
Ex.P.61	:	Account details of Axis Bank
Ex.P.62	:	Statement of SB A/c of A5
Exs.P.63 & P.64	:	Account details of Axis Bank
Ex.P.65	:	Statement of SB A/c of A5
Ex.P.66	:	Completion of Analysis- Examination report
Ex.P.67	:	Forwarding of Examination report
Ex.P.68	:	Examination report
Ex.P.59 (a)	:	Signature
Exs.P.69 & P.70	:	Summons
Exs.P.69 (a) &	:	Signatures

P.70 (a)

Exs.P.71 & P.72	:	Voluntary Statements
Exs.P.71 (a), (b) & (c)	:	Signatures
Exs.P.72 (a), (b) & (c)	:	Signatures
Ex.P.73	:	Statement of SB A/c of A5
Ex.P.74	:	Submission of required account details letter
Ex.P.75	:	Account details of A4
Ex.P.76	:	Deposit letter
Ex.P.77	:	Copy of challan
Exs.P.78 to P.81	:	Debit Cards
Ex.P.82	:	Request letter
Ex.P.83	:	Certificate of ICICI Bank
Ex.P.84	:	Certificate of Axis Bank
Ex.P.85	:	Statement of SB A/c details upto 29.3.2013 to 06.12.2016
Ex.P.86	:	Copy of statement to Axis Bank
Ex.P.87	:	Test memo
Ex.P.87 (a) & (b)	:	Signatures

(b) Defence:

: Nil

3.List of Material Objects admitted in evidence:

M.O.1	:	Sample
M.O.2	:	Sample

M.O.3	:	Sample
M.O.4	:	Bulk
M.O.5	:	Bulk
M.O.6	:	Bulk
M.O.7	:	Packing material
M.O.8	:	SIM card
M.O.9	:	Sample

(G.M.SHEENAPPA))
XXXIII ACC & SJ & SPL.JUDGE (NDPS)
BANGALORE.

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