



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S).....OF 2026
(Arising out of SLP(Crl.) No(s).5946-5947 of 2026)

MEHBOOB SHAH

...APPELLANT(S)

Versus

STATE OF MADHYA PRADESH

...RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J.

1. Leave Granted.

2. The present appeals arises out of the impugned judgment and order dated 29.09.2011 passed by the High Court of Madhya Pradesh, Bench at Indore, in Criminal Appeal No.390/1997, whereby the High Court affirmed the judgment and order of conviction dated 07.04.1997 passed by the Court of Additional Sessions Judge Garoth, District – Mandsaur, Madhya Pradesh¹, in Special Crl. Case No. 123 of 1996, whereby the appellant, Mehboob Shah, was convicted

¹ Hereinafter referred to as the 'Trial Court.'

under Sections 8 and 21 of the Narcotic Drugs and Psychotropic Substances Act 1985² and sentenced to undergo a rigorous imprisonment for 14 years along with a fine of Rs.1 Lakh, and in default of payment of fine, to undergo RI for a further period of two years.

3. The case of the prosecution, as emerging from the record, is that on 23.06.1996, ASI Indrabhan Singh Parihar (PW-9) received confidential information that the appellant was carrying contraband (*smack*), concealed in a water bottle, and was about to board the train, DN Frontier Mail, going towards Delhi. Acting upon the said information, PW-9 apprehended the appellant and allegedly recovered 100 grams of *smack* from the water bottle carried by him. Thereafter, PW-9 drew two representative samples of 5 grams each at the spot, seized the contraband and arrested the appellant. Consequently, FIR No.302/1996 was registered against him.

4. The Trial Court, upon consideration of oral and documentary evidence, found the appellant guilty of offences punishable under Sections 8 and 21 of the NDPS Act. It held that the prosecution had proved beyond reasonable doubt that 100 grams of *smack* had been recovered from the water bottle found in the possession of the appellant. The Trial Court further observed that the procedural requirements prescribed under the NDPS Act had been substantially complied with. Accordingly, the appellant was convicted and sentenced as set forth in Paragraph 2.

5. Aggrieved thereby, the appellant preferred an appeal before the High Court which, *vide* the impugned order and judgment dated 29.09.2011, affirmed the order of the Trial Court and held as under:

² Hereinafter referred to as 'NDPS'.

“20. In the case in hand, the water bottle carried by the accused on his shoulder was searched and the smack was found in that water bottle As per Ex-P/2 it is crystal clear that nothing incriminating was found from the appellant-accused when his personal search was made. The water bottle was searched at the first instance and therefore, there was no requirement at all to inform the appellant his right to be searched in the presence of the Gazetted Officer or Magistrate.. In view of the discussions made earlier, Section 50 of the Act can have no application on the facts and circumstances of the present case as heroin was allegedly recovered from the watter bottle which was being carried by the accused. Therefore, the search conducted by the Investigating Officer and the evidence collected thereby, is not illegal. Not only this, we have found that by giving option the appellant was apprised of his right and therefore, the provisions of Section 50 of the Act was fully complied with.

21. Consequently, we do not find any merit in the contentions of the learned counsel for the appellant as regards the non compliance of Section 50 of the Act.

...
23. In the present case, the trial Court by applying the recognized principle of evaluation of evidence have rightly come to the conclusion that appellant was arrested and *smack* was recovered from the water bottle for which he had no licence. We find no good reasons to differ from that finding.

...
25. The other point argued by the learned counsel is that there were discrepancies as to weight of the recovered contraband. Insofar as the recovery of contraband smack is concerned, it has been fully established that 100 gms. of *smack* was recovered and the samples thereof were sent to the FSL along with the seals. The documents like panchnama and seizure memos clearly bring out the position that 100 gm. of *smack* was found in the plastic bag. In that backdrop, the error committed by the witnesses. could be attributed to failure of human memory which is inconsequential. Under these circumstances, we are unable to agree with the contention raised before us by the learned counsel for the appellant. In our view, there is no infirmity in the judgment impugned nor on that ground the same can be set aside.

...
28. In the case in hand, there is a difference of 5 gms. in weight, in the facts and circumstances of this case, is of not much significance. The difference was minimal. In view of the law laid down in the case of **Dahel Singh(supra)**, the said discrepancy in weight is not fatal, neither on that ground it can be said that the prosecution has failed to prove its case beyond all reasonable doubts nor it creates serious doubt to the credibility of the prosecution case.

29. The learned trial Court after placing reliance on the testimony of the PW.6 and PW.9 and considering the material evidence on record was of the opinion that the case of the prosecution was fully established. The view taken by the trial Court is plausible view. All the mandatory provisions of the Act had been complied with by the prosecution. The

trial Court has assigned statutory reasons for convicting the appellant under Section 8/21 of the N.D.P.S. Act. We found that no case for reducing the sentence and fine as alternatively prayed by the appellant is made out.

30. For the above mentioned reasons, the appeal filed by the appellant has no merit and is, accordingly, **dismissed**. Appellant is on bail. He shall be taken into custody immediately for serving out rest of the sentence. His bail bonds are cancelled.”

6. Assailing the aforesaid orders of conviction and sentence, the appellant has preferred the present appeal. The main ground of challenge is that the prosecution failed to comply with the requirements of Sections 50 and 52A of the NDPS Act. It is contended that the appellant was not effectively informed of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or a Magistrate; representative samples were drawn by PW-9 himself, at the time of seizure and not in the presence of a Magistrate, contrary to Section 52A of the NDPS Act; and that the independent witnesses to the seizure turned hostile and did not support the prosecution, thereby rendering the prosecution’s case doubtful. Without prejudice to the aforesaid submissions, it is further prayed that, if the conviction is sustained, the appellant should be extended the benefit of amended Section 21, as substituted by the Narcotic Drugs and Psychotropic Substances Amendment Act 2001³, which introduced a quantity-based sentencing regime. Alternatively, if the unamended Section 21 is held to be applicable, the appellant be awarded the minimum sentence of 10 years prescribed thereunder, as no aggravating circumstances exist to justify the imposition of a higher sentence.

7. We have heard Mr. Sushil Kumar Jain, learned Senior Counsel for the appellant and Mr. Pashupathi Nath Razdan, learned Advocate on Record for the

³ Hereinafter referred to as the ‘2001 Amendment Act’.

respondent State, as also Mr. Sidharth Luthra, learned *amicus curiae* appointed by us and perused the material placed on record.

8. At the outset, it is pertinent to reiterate that although the power of this Court under Article 136 of the Constitution of India is wide and can be exercised even in cases where the Courts below have returned concurrent findings of fact, such power should be exercised only in exceptional circumstances. It is trite law that this Court will not readily interfere with the concurrent findings of fact unless they are shown to be perverse, erroneous or unsustainable in law. In ***Ganga Kumar Srivastava v. State of Bihar***⁴ this Court discussed the circumstances in which such interference may be warranted and laid down the following principles:

“10. From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution following principles emerge:

(i) The powers of this Court under Article 136 of the Constitution *are very wide* but in criminal appeals this Court does not interfere with the concurrent findings of fact *save in exceptional circumstances*.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has *acted perversely or otherwise improperly*.

(iii) It is open to this Court to invoke the power under Article 136 only in *very exceptional circumstances* as and when a question of law of general public importance arises *or a decision shocks the conscience of the Court*.

(iv) When the evidence adduced by the prosecution *fell short of the test of reliability and acceptability* and as such it is highly unsafe to act upon it.

(v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or *where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record*.”

(emphasis in original)

⁴ (2005) 6 SCC 211.

9. Keeping in view the exposition of law, we shall now proceed to examine the material placed on record and determine whether the conviction recorded by the Courts below warrants any interference.

10. The first submission advanced on behalf of the appellant is that the case of the prosecution is doubtful since the independent witnesses to the seizure have turned hostile; therefore, the conviction could not have been based solely on the testimony of the police officials. It is well settled that the testimony of official witnesses cannot be disregarded or distrusted merely on account of their official status or for want of corroboration by independent witnesses. Examination of independent witnesses is not an indispensable requirement and their non-support or absence is not necessarily fatal to the prosecution's case. A conviction may be based on the testimony of official witnesses, provided such testimony is found to be reliable and trustworthy. [See: *Rizwan Khan v. State of Chhattisgarh*⁵]

11. In the present case, we find that the prosecution has successfully proved its case against the appellant by examining PW-3 (Ashok Singh), PW-6 (Subhas), PW-9 (Indrabhan Singh Parihar) and PW-10 (CL Verma). It is true that all the aforesaid witnesses are police officials and the two independent witnesses to the seizure memo, namely PW-1 (Shantilal) and PW-2 (Babulal), turned hostile. However, the testimony of the official witnesses inspires confidence. They have uniformly deposed about the search, seizure and recovery of the contraband from the appellant. Moreover, they were thoroughly cross-examined by the defence but nothing has been brought on record to discredit their version or cast any doubt on their credibility. We find their evidence reliable and trustworthy and see no reason to disbelieve or discard it. Therefore, we are of the considered view that the Courts below committed no error in relying upon the said witnesses.

⁵ (2020) 9 SCC 627.

12. The next contention of the appellant pertains to the alleged non-compliance of Section 50 of the NDPS Act. We find the same to be devoid of merit. Section 50 of the NDPS Act confers upon an accused a valuable right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires. Such right is sacrosanct and indefeasible which cannot be disregarded by the prosecution except at its own peril. [See: *State of Punjab v. Baldev Singh*⁶] The protection under Section 50 is confined to cases where the recovery is sought to be effected through the personal search of the accused. It has no application where the search is of an article, such as a bag, container, suitcase or any other object, which the accused may be carrying. [See: *State of H.P. v. Pawan Kumar*⁷ and *Ranjan Kumar Chadha v. State of H.P.*⁸]

13. In the instant case, given that the contraband was recovered from a water bottle which the appellant was carrying and not from his person, Section 50 of the NDPS Act has no application. Even otherwise, the evidence on record clearly shows that the appellant was apprised of his right to be searched before a Magistrate or a Gazetted Officer. The Report for Grant of Consent (Exhibit P-1) records that PW-9 informed the appellant that he had the option to be searched before a Magistrate or Gazetted Officer. The relevant extract thereof is reproduced hereunder for ready reference:

“Particulars of Consent

In the presence of above named witnesses, I, the ASI Indrabhan Singh Parihar have informed above named Mahboob Muslim standing under the Overbridge at Platform No.2 of Railway Station Shamgarh that we have received an input that you have kept hidden narcotic substance called smack in your water bottle. I have to search your water bottle. If you wish you can give your search to any Magistrate or Gazetted Officer or I in their presence, on which above Mahboob is ready to give

⁶ (1999) 6 SCC 172.

⁷ (2005) 4 SCC 350.

⁸ 2023 SCC OnLine SC 1262.

his search to I, he ASI Parihar. Report for grant of consent was prepared and read over, which being acknowledged to be true was signed by the witnesses in my presence.”

The contents of the aforesaid document are duly corroborated by the testimonies of PW-6 (Constable Subhas) and PW-9 (ASI Indrabhan Singh Parihar), both of whom have consistently deposed that before conducting the search, the appellant was given the option of being in the presence of a Gazetted Officer or a Magistrate. Thus, even though Section 50 had no application, the appellant was nevertheless informed of the safeguard prescribed thereunder.

14. The appellant has further contended that there has been non-compliance with Section 52A of the NDPS Act, inasmuch as the representative samples were not drawn in the presence of a Magistrate. We are unable to accept the said submission. It is well settled that mere delayed compliance or non-compliance of the procedure envisaged under Section 52A does not, by itself, entitle the accused to claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the search and seizure of the contraband was conducted in accordance with the mandatory provisions of the NDPS Act. Where non-compliance of Section 52A of the NDPS Act is alleged, the prosecution must prove either substantial compliance with the mandate of Section 52A of the NDPS Act or satisfy the Court that such non-compliance has not affected its case against the accused. [See: *Bharat Aambale v. State of Chhattisgarh*⁹] The ambit and scope of the aforesaid section has been discussed in detail by a co-ordinate Bench of this Court in *Narcotics Control Bureau v. Kashif*¹⁰, wherein it was held as under:

“42. Significantly, the authorised officer can make the application under sub-section (2) of Section 52-A for three purposes — (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such Magistrate, photographs of the seized drugs,

⁹ (2025) 8 SCC 452.

¹⁰ (2024) 11 SCC 372.

substances and 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. The use of the conjunction “OR” made in between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision much less its non-compliance fatal to the case of prosecution.

43. Though it is true that the inventory certified, photographs taken and the list of samples drawn under sub-section (2) has to be treated by the court as primary evidence in view of sub-section (3), nonetheless the documents like panchnama, seizure memo, arrest memo, etc. prepared by the investigating officer on the spot or during the course of investigation are also primary evidence within the meaning of Section 62 of the Evidence Act, carrying the same evidentiary value as any other primary evidence. Such primary evidence with regard to search and seizure of the contraband substance could not be overlooked merely because some lapse or non-compliance is found of Section 52-A of the Act.

... ..

45. None of the provisions in the Act prohibits sample to be taken on the spot at the time of seizure, much less Section 52-A of the said Act. On the contrary, as per the procedure laid down in the Standing Orders and notifications issued by the NCB and the Central Government before and after the insertion of Section 52-A till the 2022 Rules were framed, the officer concerned was required to take samples of the seized contraband substances on the spot of recovery in duplicate in the presence of the panch witnesses and the person in whose possession the drug or substance recovered, by drawing a panchnama. It was only with regard to the remnant substance, the procedure for disposal of the said substance was required to be followed as prescribed in Section 52-A.

... ..

50. The upshot of the above discussion may be summarised as under:

... ..

50.3. The purpose of insertion of Section 52-A 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.

50.4. Sub-section (2) of Section 52-A 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.

50.5. 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.

50.6. Any lapse or delay in compliance with Section 52-A 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.”

15. It is undisputed that the samples were drawn by PW-9 himself at the time of seizure and not in the presence of a Magistrate. However, the appellant has failed to demonstrate that such non-compliance has caused him any serious prejudice. It is pertinent to note that the NDPS Act, as it then stood, did not prohibit drawing of samples at the spot of seizure. As noticed above, the requirement under Section 52A is procedural in nature. The documents like *panchnama*, seizure memo, arrest memo, etc., prepared by the Investigating Officer on the spot or during the course of investigation constitute primary evidence, with regard to search and seizure of the contraband, which cannot be overlooked merely because of some lapse or non-compliance is found with Section 52A of the Act. [See: *Kashif* (supra)]

16. In the facts of the present case, the prosecution has adduced cogent oral and documentary evidence to establish the recovery of the contraband including seizure memo and *panchnama*. The record further reveals that the samples were duly sealed in the presence of the appellant and were thereafter sent to the Forensic Science Laboratory, Indore, for chemical examination, which confirmed the seized substance to be *diacetylmorphine* (smack/heroin). It is nobody's case that the chain of custody was broken or that the samples were tampered with. In these circumstances, the fact that the samples were not drawn in the presence of

a Magistrate is merely a procedural irregularity and cannot be ground for acquittal.

17. In view of the foregoing discussion, we find that the Trial Court and the High Court have meticulously appreciated the entire evidence. On such close scrutiny, both the Courts below have rightly concluded that the prosecution has proved its case beyond reasonable doubt. We find no perversity or legal infirmity in the findings recorded by the Courts below so as to warrant interference under Article 136 of the Constitution.

18. Alternatively, the appellant has prayed that he be extended the benefit of Section 21 of the amended NDPS Act, which introduced a quantity based sentencing regime. It was submitted that the quantity of contraband allegedly recovered from the appellant falls much below the commercial quantity specified under the amended provision. In our considered opinion, such relief cannot be granted. Section 41 of the Act 9 of 2001, i.e., the 2001 Amendment Act, expressly provides that the amended provisions would only apply to cases which were pending before the Trial Courts or under investigation as on 02.10.2001, the date on which the 2001 Amendment Act came into force. The *proviso* thereto specifically excludes cases where the trial had concluded, and the matter was pending in appeal. [See: ***Basheer v. State of Kerala***¹¹] As the appellant had already been convicted by the Trial Court on 07.04.1997 and his appeal was pending before the High Court when the Amendment Act came into force, the benefit of the amended Section 21 cannot be extended to him.

19. However, considering that the unamended Section 21 prescribed a minimum sentence of 10 years and there are no aggravating circumstances warranting the imposition of a higher sentence, we are of the view that the ends

¹¹ (2004) 3 SCC 609.

of justice would be adequately met if the sentence awarded to the appellant is reduced to the minimum prescribed thereunder.

20. For the reasons stated above, the appeals are partly allowed. The conviction of the appellant under Sections 8 and 21 of the NDPS Act is affirmed. The impugned judgments of the Trial Court and the High Court are modified only to the extent of the sentence awarded to the appellant, which is reduced from 14 years to 10 years of rigorous imprisonment. The punishment of a fine of Rs.1 Lakh is maintained. If the fine has not already been deposited, the appellant shall deposit the same within a period of three months, failing which he shall undergo rigorous imprisonment for a further period of one year.

21. We appreciate the efforts put in by the learned *amicus curiae* Mr. Sidharth Luthra.

Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
21st July 2026