

In the Court of the Additional District & Sessions Judge, 1st. Court,
Suri, Birbhum.

Present : Shri Indranil Bhattacharyya,
Additional Sessions Judge,
1st Court, Suri, Birbhum.

C. Case No. 47 of 2011 arising out of
Kankartala P.S. case no. 19 of 2011
Dt. 09.03.2011.

State : Versus : Uttam Kumar Pal.

Charge Under Section 17 of the Narcotic Drugs and Psychotropic
Substances Act, 1985.

Name of the Ld. Advocate for Prosecution :

Name of the Ld. Advocate for the accused person :

Date of Delivery of Judgment : 05.12.2015.

J U D G E M E N T

This case has come up for trial after being initiated against the accused person, Uttam Kumar Pal Under Section 17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act, 1985) arising out of Kankartala P.S. Case no. 19 of 2011, dated, 09.03.2011.

The background of this case as per the prosecution version is as follows :-

That, at about 21.15 hrs. on 09.03.11, defacto complaint S.I. Madhab Chandra Mondal being the O.C. of Kankartala P.S. received a secret source information that one person namely Uttam Kumar Pal had stored opium poppy juice in his house at Babuijore village and thereafter he noted down the same in a G.D. Entry book and informed the said matter to the D.S.P.,

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Headquarter. Thereafter along with other force, he went to the house of the accused Uttam Kumar Pal at Babuijore village and the source informant identified the house of the accused Uttam Kumar Pal. After arrival of the D.S.P.,

Headquarter at the said place, the defacto complaint Madhab Chandra Mondal summoned the accused Uttam Kumar Pal. When said accused Uttam Kumar Pal opened the door of his house the defacto complainant along with other member of the forces entered into the house of the accused. After disclosing the identity and information about storage of opium poppy juice, said defacto complainant expressed his intention to search the house and at that time, he offered to be searched by the accused person but the said accused person did not incline to do so. He did not even want to be searched in presence of any Magistrate. Thereafter, in the presence of D.S.P., Headquarter, search operation was conducted and a packet of opium poppy juice wrapped with newspaper owing 3 kg. was recovered from the bed room of the house of the accused. Thereafter, two sample packets of 100 gms. each was collected from the said article as recovered and those were sealed and labeled and finally seizure list was prepared in respect of the seized article. Thereafter, the accused person was arrested and brought to the P.S. along with Alamat. Thereafter, a suo motto complaint was lodged by the defacto complainant S.I. Madhab Chandra Mondal and on that basis formal F.I.R. was made and Kankartala P.S. Case no. 19 of 2011, dated, 09.03.2011 was registered and same was endorsed to S.I. Dibakar Dutta for investigation. During investigation from that seized article approximately 200 gms. as collected as sample was subsequently sent for chemical analysis at FSL Department at Kolkata. In course of investigation, chemical analysis report of the sample, which was sent for chemical analysis, had been received by the Investigating officer and finally charge sheet was submitted against that person. Thereafter, charge was framed against that person, namely Uttam Kumar Pal Under Section 17 of the N.D.P.S. Act, 1985. Hence the trial of this case commenced.

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Case on behalf of the prosecution in short :

It is the case of the prosecution that on 09.03.11, at about 21.15 hrs., S.I. Madhab Chandra Mondal being the O.C. of Kankartala P.S. received a secret source information that one person namely Uttam Kumar Pal had stored opium poppy juice at his residence at Babuijore village and thereafter he noted down the same in a G.D. Entry book and informed the said matter to the D.S.P., Headquarter. Thereafter along with other force, he went to the house of the accused Uttam Kumar Pal at Babuijore village and the source informant identified the house of the accused Uttam Kumar Pal. After arrival of the D.S.P., Headquarter, at the said place, the defacto complaint Madhab Chandra Mondal summoned the accused Uttam Kumar Pal. When said accused Uttam Kumar Pal opened the door of his house said Madhab Chandra Mondal along with other member of the forces entered into the house of the accused. After disclosing the identity and information about storage of opium poppy juice, said defacto complainant expressed his intention to search the house and at that time, he offered to be searched by the accused person but the said accused person did not incline to do so. He did not even want to be searched in presence of any Magistrate. Thereafter, in the presence of D.S.P., Headquarter, search operation was conducted and a packet of opium poppy juice wrapped with newspaper owing 3 kg. was recovered from the bed room of the house of the accused. Thereafter, two sample packets of 100 gms. each was collected from the said article as recovered and those were sealed and labeled and finally seizure list was prepared in respect of the seized article. Thereafter, the accused person was arrested and brought to the P.S. along with Alamat. Thereafter, a suo motto complaint was lodged by the defacto complainant S.I. Madhab Chandra Mondal and on that basis formal F.I.R. was made and Kankartala P.S. Case no. 19 of 2011, dated, 09.03.2011 was registered and same was endorsed to S.I. Dibakar Dutta for investigation. During investigation, the seized article approximately 200 gms. as collected as sample was sent for chemical

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analysis at FSL Department at Kolkata. In course of investigation, chemical analysis report of the sample had been received by the Investigating officer and finally charge sheet was submitted against that person. Thereafter, charge was framed against that person, namely Uttam Kumar Pal Under Section 17 of the N.D.P.S. Act, 1985. Hence the trial of this case commenced.

In this case, at the time of trial, prosecution has tried to bring home charge Under Section 17 of the N.D.P.S. Act, 1985 against the accused, Uttam Kumar Pal, against whom the case had been initiated for possessing 3 kg. opium poppy juice (psychotropic substance) and storing the same at his own residence for the use of commercial purpose without any valid licence in contravention of the N.D.P.S. Act 1985 and rules. In doing so prosecution has produced some documents such as : 1. Seizure list being marked as Exbt. 1; 2. G.D. Entry no. 285, dt. 09.03.11 being no. Exbt. 3; 3. Written complaint being marked as Exbt. 4; 4. Formal portion of the F.I.R. no. Exbt. 4/1; 5. Rough sketch map of the P.O. being marked as Exbt. 5; 6. Index being marked as Exbt. 6; 7. F.S.L. report being marked as Exbt. 8.

In support of this case, prosecution has also submitted the seized alamat which is marked as Mat. Exbt. I and the Sample article is marked as Mat. Exbt. II.

To bring home charges, prosecution has adduced as many as 07 witnesses such as :

- (i). PW-1 Santo Kumar Mitra, D.S.P. of Police Headquarter, Suri, Birbhum, who accompanied the raiding party.
- (ii). PW-2, S.I. Madhab Chandra Mondal being the O.C. of Kankartala P.S., Birbhum, is the complainant of this case.
- (iii). PW-3, Bishawambhar Mukherjee, Constable being no. C/907 who accompanied the raiding party.
- (iv). PW-4, Gopi Prasad Roy, Constable being no. C/1191 who also accompanied the raiding party.

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(v). PW-5, Somnath Dutta, A.S.I. of Police, who is the member of the raiding party.

(vii). PW-6, S.I. Dibakar Dutta, who is the investigating officer of the first phase of the investigation.

(vii). PW-7, Panchanan Das, driver who brought the police personnel at Babuijore village, near bus-stand by driving the vehicle.

In this case, on the basis of the written complaint as filed by the complainant, some documents as mentioned above and also on the basis of oral evidence as adduced by as many as 7 witnesses on behalf of the prosecution, as described above, the prosecution has pleaded for conviction of the accused person under section 17 of the N.D.P.S. Act, 1985.

On the other hand, defence case, as it appears from the trend of cross-examination as well as from the examination of the accused person under the provision of Section 313 of the Cr.P.C., is the plea of innocence with the allegation of false implication in the case. On behalf of the defence, no witness has been adduced.

On the basis of the contentions of both the prosecution and defence, this court is inclined to fix the following points for determination :-

1. Did the accused person, namely Uttam Kumar Pal commit the offence for possessing 3 kg. opium poppy juice (psychotropic substance) and storing the same at his own residence for the use of commercial purpose without any valid licence in contravention of the provision of N.D.P.S. Act 1985 and Rules framed there under ?
2. Is the accused person, namely Uttam Kumar Pal liable to be convicted under the provision of section 17 of the N.D.P.S. Act, 1985 ?

DECISION WITH REASONS

The settled principle in the field of administration of criminal justice is that the prosecution has to prove its own case by cogent and corroborating evidence and also going beyond the slightest shadow of doubt.

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Let us see how far the prosecution has been able to bring home the charges against the accused person. In support of its contentions and to establish the case, prosecution has examined as many as twelve witnesses and they have been cross examined by the defence. All the twelve prosecution witnesses are described below in short.

PW-1, Santo Kumar Mitra, has stated in his examination-in-chief that on 09.03.11 after receiving the source information O.C., Madhab Chandra Mondal, O.C. of Kankartala P.S. informed him over telephone that at the residence of one Uttam Kumar Pal at Babuijore huge quantity of opium poppy is stored illegally for commercial purpose and he has also requested him to proceed immediately towards Babuijore where the residence of Uttam Kumar Pal is situated to supervise the search and conduct. After receiving the said information, he reached in front of the residence of Uttam Kumar Pal at Babuijore village at about 10 p.m. After reaching the place he noticed one Uttam Kumar Pal standing inside the house and he disclosed his own identity as Uttam Kumar Pal. After offering Uttam Kumar Pal to allow them for searching his residence in the presence of witness after disclosing his identity. In responding to his proposal, Uttam Kumar Pal allowed them to enter his residence and to conduct search operation. During search operation, O.C. Kankartala P.S. noticed one plastic packet containing juice of opium poppy under a pot which was kept in the southern portion of his room facing east and on interrogation at the spot said Uttam Kumar Pal admitted that the article inside that packet is nothing but a opium poppy juice which has illegally procured and stored for illegal purpose. Thereafter, O.C. of Kankartala P.S. made weighment of that article and it was noticed that the said article was 3 kg. of opium poppy juice. Thereafter, said article was seized under a proper seizure list and two sample weighing 100 gms. each were obtained by taking the said article from that original packed of the article. All the articles were sealed, labelled and signed by the O.C of Kankartala P.S. along with other police personnel who accompanied the O.C. He also signed the said seal and lable of the said

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article and the accused Uttam Kumar Pal put his signatures in the said seal and label of the article.

In his cross examination, he has stated that he got information at about 9 p.m. He accompanied with the driver namely, Subhas Bag. Time of reaching, starting of journey, time of reaching at the spot are supposed to be noted in the log book which is maintained during official visit. He reached at Babuijore village at about 10 p.m. He did not make any written notice for searching the police personnel and after disclosing his identity Uttam allowed him to enter his house. There had been some female inmates in the house of Uttam. He cannot recollect whether anybody of those inmates of the house of Uttam was called at the time of seizure. He could not recollect whether anybody of those inmates was called at the time of seizure. There had been many houses surrounding the house of Uttam Pal. None of the inmates of those houses came out in front of the police personnel. He did not call them personally. He called some of the neighbours of said Uttam Kumar Pal through the O.C. but none of them came out but he could not recollect the name of the persons to whom he directed to come to the spot. He did not take any step against any of the inmates of the neighbouring house of Uttam for their non-responding to his call.

PW-2, Madhab Chandra Mondal has stated in his examination-in-chief that on 09.03.11, at about 21.15 hrs. he got a source information that one Uttam Kumar Pal had stored opium poppy juice in his house at Babuijore village and thereafter he noted down the same in the G.D. Entry book. After that, he informed the said matter to the D.S.P. Headquarter. Thereafter, he along with other forces went to the house of the accused Uttam Kumar Pal at Babuijore village. The source informant identified the house of the accused Uttam Kumar Pal as he was present with them and by this time, D.S.P., Headquarter had reached the place. Thereafter, they called the owner of the house Uttam Kumar Pal and they also called the other inhabitants of the neighbouring houses of the accused Uttam Kumar Pal but they did not turn up. After summoning, accused Uttam Kumar Pal had

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opened the door and then they entered into the house of the accused Uttam Kumar Pal, they disclosed the information about the storage of opium poppy juice in his house and they intended to search his house after disclosing their identity. At that time, they offered a proposal to the accused whether he would be searched by any Magistrate or not but he did not want to be searched in presence of any Magistrate. Thereafter, they conducted search operation in presence of D.S.P. Headquarter. At the time of search, they recovered a packet of opium poppy juice wrapped with newspaper weighing 3 kg. from the bed room of the house of the accused and they seized the same under a seizure list by obtaining the signature of the accused, Uttam Kumar Pal, on the said seizure list. Thereafter, they prepared two sample packets of 100 gms. each after collecting the opium poppy juice from the main recovered article and thereafter the same sample packets were duly sealed with labels. Thereafter, they arrested the accused person and brought him to the P.S. along with the alamat. Thereafter, he lodged the suo motto complaint and duly filled up the formal F.I.R. by his own handwriting. Thereafter the case was endorsed to S.I. Dibakar Dutta for investigation of this case by him.

In his cross examination, he has stated that after getting information, they started their journey from the P.S. to work out the information within 10 to 15 minutes and they reached the P.O. at Babuijiore village within one hour. When they reached the house of the accused and summoned him to open the door of his house, it was around 10 to 10.05 p.m. Being summoned by them, accused Uttam Kumar Pal opened the main gate of his house and allowed them to enter his house. There was no other inmate than the wife, mother and the two children of the accused as far as he can recollect. He did not give any written notice to the accused for searching his residence. Before searching he did not give any written notice to the said accused regarding whether he wants to be searched in presence of any Magistrate or not; but he asked the accused about it verbally. They started to prepare the seizure list within 10 to 15 minutes after reaching the house of the said accused and they

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took one hour for preparing the seizure list. They did not prepare any separate seizure list in respect of the seized alamat and sample collected from the seized alamat. They did not prepare the weighment chart at the time of measurement of the seized article. In spite of their request, none of the inmates of the house of the accused put his signature on the seizure list as witness but endorsement was made on the seizure list regarding refusal of putting signature. After returning the P.S., the seized alamat was handed over to the Malkhana officer and the same was sent to the respective places from the Malkhana. He has further stated in his examination-in-chief that no enquiry was made through B.L&L.R.O. regarding the ownership of the house where they conducted raid. He further stated after search, seizure and lodging F.I.R., he informed the matter to his superior through R.T.M. but not through any handwritten document.

PW-3, Bishawambhar Mukherjee has stated in his examination-in-chief that on 09.03.11, he went to the village Babuijore with the O.C. Madhab Chandra Mondal, S.I. Somnath Dutta and other police personnel and they went near the bus-stand at Babuijore village. The O.C. Madhab Chandra Mondal, took him to a house of one person but he cannot recollect the name of that person. After entering into the premises of that house, he stood at the courtyard of that house. An article, like opium poppy juice, was found but he cannot recollect what exact thing which was found at that house. At this stage, he cannot recollect anything more.

In his cross examination, he has stated that he cannot remember whether he put his signatures on the seizure list at the P.S. or any other places. He has no knowledge about the contents of the seizure list. He cannot remember when they exactly assembled at Babuijore bus-stand but perhaps it may be 6 to 7 o'clock evening. He cannot recollect how many police personnel were present with him. He cannot recollect whether he put his signatures on the alamat and sample taken from alamat within the P.S. or any other places. Though he had been present within the premises but he cannot remember what happened within the room of the house.

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PW-4, Gopi Prasad Roy has stated in his examination-in-chief that on 09.03.11, he went for a raid with Barobabu. Somnath Babu and other police personnel were also amongst the raiding party. They went to Babuijore village. He was in the outside of the house and cordoned the house in which the police made a search operation as he was instructed by his authority to make cordon the said house. He has no other knowledge about the fact what happened inside the premises.

In his cross examination, he has stated that he cannot recollect when they reached Babuijore village and he cannot also recollect the exact place of Babuijore village where he went for search operation with Somnath Babu and Madhab Babu and other police personnel who entered into the house at Babuijore village. He cannot recollect the exact duration of the time for stay at the P.O. He cannot recollect the time when they returned to the P.S. He cannot recollect whether they went out for search operation in the evening or any other time.

PW-5, Somnath Dutta has stated in his examination-in-chief that on 09.03.11 he himself along with the then O.C. Madhab Chandra Mondal and other forces went for a raid at Babuijore village. The entire raiding team was under the supervision of the O.C. Madhab Chandra Mondal. On that day as per source information, they recovered some opium poppy juice from the house of the accused Uttam Pal. The said article was kept under a cot which was placed in a room of the said house of Uttam Pal. The said house was identified by the source to the O.C. Thereafter, such article was seized by the O.C. by preparing a seizure list. Thereafter, it was brought to the P.S. and the O.C. Madhab Chandra Mondal made a written complaint. He further stated that he put his signature on the seizure list dt. 09.03.11 as witness.

After search and seizure, the said accused Uttam Pal was arrested and brought to the P.S. During evidence, witness has identified the said accused in the accused dock.

In his cross-examination, he has said that they left the Kankartala P.S. for making raid at Babuijore village at about 6.30 p.m. / 7 p.m. The distance between Babuijore village and Kankartala P.S. is about 7 k.m. and it took 15 minutes to reach the Babuijore village from Kankartala P.S. He has stated in his cross-examination that he cannot recollect the exact time when they entered into the house of the accused Uttam Pal. He has further stated in his cross-examination that they entered into the house of Uttam Pal within 10 / 15 minutes after reaching the Babuijore village. When he reached near the house of accused Uttam Pal, he saw the gate of the house of the accused Uttam Pal was closed. After knocking at the door, the said door was opened by the inmates of the house. He has also said that he cannot recollect whether the neighbouring people came to the spot after being summoned by the O.C. He cannot say the exact number of room of the house of the accused but he entered into the room situated in the left side of the Varanda of ground floor. At first, only the O.C. entered into the said room. Thereafter, he entered into the said room. he also took part into the search and seizure with the O.C. and it took 15 minutes to find out such opium poppy juice. The O.C. took out that article from below the cot. Thereafter, they came out from the room after preparation of the seizure list. They left the place along with the accused Uttam Pal. He further stated that he could not recollect whether the inmates of that house were instructed to put their signatures on the seizure list or not. The entire operation took 45 minutes time. Thereafter, they returned to the Kankartala P.S. and it was about 9.30 o'clock past.

PW-6, Dibakar Dutta has stated in his examination-in-chief that after being entrusted with the charge of investigation of this case, he took the seized alamat and the accused in his custody. Thereafter, he visited the P.O. at Babuijore village and drew rough sketch map along with index and examined both the complainant and seizure witnesses and also examined the other witnesses.

Thereafter, he forwarded the accused person to the Ld. Court and he sent the sample as collected from the mother article to the F.S.L Department , Calcutta for chemical examination and opinion.

He further stated that after conducting the investigation in part of this case, he handed over the case docket along with C.D. to the O.C. of Kankartala on 02.11.11 as he was transferred. He also said that he did not collect the report of the F.S.L.

In his cross examination he has said that he took the charge of investigation of this case at 23.55 hrs. and he collected the alamat from the O.C. Babuijore is a big village. The bus-stand of Babuijore is not shown in his sketch map. The surrounding area of the P.O. is mentioned in his index and he has also mentioned the same in the C.D. He also said that the house of Goutam Pal is situated in the northern side of the house of the accused; the house of the Ashoke Mondal is situated in the eastern side of the house of the accused; the house of the Prakash Mondal is situated in the western side of the accused. He further stated that he did not examine any of the inmates of the surrounding houses of the accused as mentioned in his index. He has also stated that he also did not examine any of the inmates of the accused person Uttam Pal.

He further stated in his cross examination that he did not make any inquiry regarding specification of the ownership of the house of the accused either from B.L&L.R.O. or from Panchayet. He did not seize any log books of the vehicles by which O.C. Madhab Chandra Mondal and D.S.P Santa Mitra went for a raid to Babuijore village. He also said that he did not examine either the driver of the vehicle of the D.S.P. Sankar Saha or the security of the D.S.P. namely Subhas Bag. However, he denied that the investigation has been made in a perfunctory manner.

PW-7 Panchanan Das has stated in his examination-in-chief that he is a driver by profession. He also stated that during the year 2011, he was engaged in driving a vehicle of Kankartala P.S. At that time Madhab Chandra Mondal was the then O.C. of that P.S. On 09.03.11 at about 6.30

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a.m., they were at Babuijore village near bus-stand. He has stated that he I has no knowledge about any incident which occurred at that time as he was sitting all along on the driver seat of the vehicle and after sometime he returned to the P.S. with other police forces by plying the vehicle. He also said that he did not see anybody to be arrested.

He has stated in his cross examination that he was not examined by police in connection with any matter of Babuijore.

All these are about the prosecution witnesses so far examined, but no defence witness had been adduced on behalf of the accused person who has tried to defend his case on the basis of plea of innocence and false implication in this case and also the plea of not guilty.

In this case, prosecution has tried to establish that the accused, Uttam Kumar Pal committed an offence punishable under section 17 of the N.D.P.S. Act, 1985, for possessing 3 kg. opium poppy juice (psychotropic substance) and storing the same at his own residence for the use of commercial purpose without any valid licence in contravention of the provision of the N.D.P.S. Act, 1985 and Rules framed there under. The prosecution has tried to establish its case by producing some documents and adducing evidence of some witnesses, as good as 7 witnesses. From the written complaint, it appears that the prosecution case has been made out on the same line in which written complaint was lodged. In an effort to bring home the charge against the accused person, prosecution has adduced the evidence of the complainant, S.I. of Police Madhab Chndra Mondal who was posted at Kankartala P.S. at the relevant time. He had tried to corroborate the prosecution case so far possession of the psychotropic substance like opium poppy juice and proper compliance of all the provision of law under the N.D.P.S. Act, 1985, as applicable in investigation of any case under this Act are concerned. Prosecution has also adduced other witnesses such as PW-1, Santo Kumar Mitra, D.S.P. of Police Headquarter, Suri, Brigham; PW-3 Bishawambhar Mukherjee being Constable No. C/907 being the member of raiding party; PW-4, Gopi Prasad Roy, constable

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being no. C/1191; PW- 5, Somnath Dutta, A.S.I of Police being member of raiding party; PW-6, S.I. of Police Dibakar Dutta who is the investigating officer.

It is the case of the prosecution that right from collecting the source information till the filing of charge-sheet, all the provisions of N.D.P.S. Act, 1985, have been complied with on behalf of the prosecution. Provision of section 42 to 57, which are the key statutory provision under the N.D.P.S. Act, 1985, are to be taken up for consideration so far its compliance is concerned. It is the case of the prosecution that in this case, section 42 of the N.D.P.S. Act, 1985, which provides the power of entry, search, seizure and arrest without warrant to the officer as specified under N.D.P.S. Act, 1985, has been properly complied with, since after obtaining secrete information the concerned police officer reducing it into writing proceeded for search, seizure and arrest of the accused person in the place of occurrence. It is also the case of the prosecution that the provision of section 42(2) of the N.D.P.S. Act, 1985, where under the concerned police officer, who has taken the secret information in writing, is to communicate it to his immediate official superior by sending copy of such written information within seventy two hours from the time of receiving such information, has also been properly complied with in this case, since the concerned officer of Kankartala P.S., has intimated the secrete information to his immediate superior officer I.C. of Kankartala P.S. It is also the case of the prosecution that immediately after getting the secrete information and after giving the said information to the immediate superior officer, the concerned police officer has reduced it into the general diary as per provision of section 42 of the N.D.P.S. Act, 1985 and in support of the case prosecution has relied upon the document ie the photo copy of the excerpt of general diary being marked as Exbt. 3. It is also the further case of the prosecution that the another relevant provision relating to the procedural matter so far obligation on the part of the prosecution after search, seizure and arrest is concerned as laid down under section 57 of the N.D.P.S. Act, 1985, has been also

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properly complied with since within 48 hours next after arrest and seizure, a full report of all the particulars of such arrest and seizure by the concerned police officer has been communicated to his immediate official superior but that has been made in the form of written complaint before the I.C. of Kankartala P.S. It is also the further case of the prosecution that at the time of search and seizure, provision of section 50 of the N.D.P.S. Act, 1985 has been properly complied with. As per the prosecution version, section 50 of the N.D.P.S. Act, 1985, entails about the condition under which search of the suspected person shall be conducted and it provides that such suspected person, if so required, shall be taken without unnecessary delay to the nearest gazetted officer of any department or to the nearest magistrate as mentioned in section 42 of the N.D.P.S. Act, 1985. It has also been provided in the section that when an officer duly authorized under section 42 of the N.D.P.S. Act has reason to believe that it is not possible to take the person to be searched to the nearest gazetted officer or magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substances or controlled substance or article or document, such officer duly authorized under section 42 of the N.D.P.S. Act, 1985 shall proceed to search the suspected person in presence of gazetted officer. As per the prosecution case, such provision of section 50 of the N.D.P.S. Act, 1985 has been properly complied with at the time of search and seizure since the accused Bikash alias Makhan was searched by the complainant with the help of other police personnel in the presence of the I.C. of Kankartala P.S. and before such search the accused person was served with notice whether he is agreed to be searched in presence of the magistrate being the gazetted officer. In this regard it is the contention of the prosecution that such fact of compliance of the provision of section 50 of the N.D.P.S. Act, 1985 has been well corroborated and such fact of compliance as per prosecution case has also been well corroborated with the evidence of the complainant, PW-2. In addition to its case of compliance with all the relevant provision of N.D.P.S. Act., 1985, prosecution has also tried to

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establish its case of exclusive possession of psychotropic substances by the accused. Such case of exclusive possession has been well corroborated by producing one document, the seizure list being marked as Exbt. 1 as per the prosecution version and this fact of possession of psychotropic substance like opium poppy juice measuring about 3 kg. has been well corroborated by the evidence of PW-2, the complainant and other prosecution witnesses who are all the police personnel and the seizure witnesses.

Under the backdrop of aforesaid consideration, it has been contended by the prosecution that the accused has committed an offence punishable under section 17 of the N.D.P.S. Act, 1985 for the possession of such psychotropic substances ie opium poppy juice measuring about 3 kg. and for storing the same at his own residence for the use of commercial purpose without valid licence and the prosecution has been able to establish the same with the help of some corroborative evidence both oral and documentary.

In reply, at the time of argument, Ld. Defence counsel has opposed the prosecution case with this contention that the prosecution has failed to establish the case regarding compliance of the relevant provision specially the section 42, 50 and 57 of the N.D.P.S. Act, 1985 which are very much relevant for the stages of search, seizure and arrest and subsequent stages at the period of investigation. It is the defence version that the prosecution case is an utter failure so far the compliance of section 42, 50 and 57 of the N.D.P.S. Act, 1985, is concerned. As per the defence case, provision of section 42 has not been properly complied with due to failure on the part of the officer concerned who had proceeded for search and seizure after getting the secrete information by giving intimation to his official superior prior to reducing it into writing and as a result, the prosecution has been vitiated as per the defence version. It is also the case of the defence that prosecution has failed to comply with the provision of 57 of the N.D.P.S. Act, 1985, since the person who made arrest or seizure, he only himself supposed to give full record of particulars of such arrest and seizure to his immediate official superior within 48 hours from such arrest

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and seizure. In this case as per defence version, the person, who made such arrest and seizure himself has not intimated the particulars to his official superior rather it was intimated by other officer who did not take part into the seizure and arrest personally.

Under the backdrop of these contentions, Ld. Defence counsel has contended that prosecution has failed to establish its case, rather prosecution case was vitiated completely due to non-compliance of those provisions of the N.D.P.S. Act, 1985, specially of section 42, 50 and 57 which are the key provisions of the N.D.P.S. Act, 1985, regarding procedure and method of search, seizure and arrest and subsequent proceedings thereto which are essential for establishing the prosecution case beyond any reasonable doubt.

In support of these defence version, Ld. Advocate appearing for the accused has referred some decisions of the Hon'ble Apex Court and various High Court. In this regard, so far the effect of non-compliance of the provision of section 50 of the N.D.P.S. Act, 1985 is concerned, one of the decision of the Hon'ble Apex Court as referred is Nirmal Singh Pehlwan alias Nimma versus Inspector, Customs, Customs House, Punjab, reported in (2012) 2 C.Cr. L.R. (S.C.) 388 where under it has been observed that strict compliance of the provision of section 50 of the of the N.D.P.S. Act, 1985 is necessary and any deviation of the same can vitiate the prosecution case. In case of effect of non-compliance of the provision of section 42 of the N.D.P.S. Act, 1985, one decision of the Hon'ble Punjab and Haryana High Court has been referred by the Ld. Defence counsel and that is (Rajender Singh) versus State of Haryana reported in (2011)3C Cr.L.R., (S.C.) 240 where under it has been held that the accused is entitled to get acquittal when no cogent reason assigned by prosecution for non forwarding of written information of offence to superior officer under the provision of section of 42 of the N.D.P.S. Act, 1985. In the light of this decision of the Hon'ble High Court, Ld. Defence counsel has argued that in this case, the concerned police officer, who received the secrete source information, did not sent the copy of such written up secrete information to his official

superior and as such, the prosecution case is vitiated. In support of the case of defence version, Ld. Defence counsel has also referred another decision of the Allahabad High Court ie Pandav Sarkar versus State of U.P. reported in 2012(3) A.I.C.I.R. 269 wherein it has been observed by the Hon'ble Court that section 42 is mandatory in character and its non-observation is fatal to the prosecution case. It has been also held in this case that once a penal statute lays down a procedure to be observed in matter of investigation or crime detection, then either that procedure be observed and things be done in that manner or not at all. It has been also observed in this case that if no document produced by the prosecution to lead credence to such statement that he had given intimation of seizure to his superior official is not sufficient to conclude that compliance of section 57 of the N.D.P.S. Act, 1985 and it is the lapse on the part of the prosecution. With reference to this decision of the Hon'ble Allahabad High Court, Ld. Defence counsel has submitted that such lapse is fatal for the prosecution since such lapse was the reason for consideration of setting aside of conviction in the above mentioned reported case, Pandav Sarkar versus State of U.P. (Supra). In support of this view, Ld. Defence counsel has referred one decision of the Hon'ble Supreme Court ie (Sarju v. State of U.P. reported in A.I.R. 2009 SC 3214 wherein it has been held by the Hon'ble Apex Court that compliance of section 42 of N.D.P.S. Act is mandatory in nature. Hon'ble Supreme Court has also observed in this case in same line, as that of Sajan Abraham versus State of Kerala (2001) 6 S.C.C. page 692, that the officer on receiving the information (of the nature referred to in sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1). In the light of the aforesaid discussion of the Hon'ble Apex Court, Ld. Defence counsel has contended that prosecution case has completely been vitiated due to non-compliance of the provision of section 42 and 57 of the N.D.P.S. Act, 1985.

Contd.....

For the determination of the points of controversy, under the backdrop of above discussed contrary view point of both, the prosecution and the defence, it is to be assessed first from the evidence on record, both oral and documentary as adduced in this case, that how far the prosecution in an effort to bring home charge against the accused as framed in this case has been able to prove that it has complied with all the relevant provisions under the N.D.P.S. Act, 1985, as applicable in this case.

It appears from the foregoing discussion that the relevant provision of law under the N.D.P.S. Act, 1985, which are attracted to adjudicate this case are the provision of section 42, 50 and 57 of the N.D.P.S. Act, 1985. The main ingredients of the provision of section 42 of the N.D.P.S. Act, 1985 which is to be complied with, is that firstly information should be reduced in writing before going for search, seizure and arrest by such officer who received the same and secondly such information in writing shall be send by that officer within seventy-two hours to his immediate official superior. But in this case not a single evidence could support the prosecution case. PW-2, D.S.P., Police Heqdquarter, Suri, who received that information, has tried to corroborate the prosecution case to that effect.. It can not be transpired whether provision of section 42(2) of the N.D.P.S. Act, 1985, has been complied with or not. Ld. Advocate for the prosecution has tried to bring it before the notice of this court with reference to the evidence of PW-1 wherefrom it is transpired that he was informed with the matter ie source information by the complainant that O.C. of Kankartala P.S. but in support of the same no exclusive document was produced by the prosecution. Therefore, in my view such lapse remains very much in existence in prosecution case and that could not be cured.

Another mandatory provision of section 57 of the N.D.P.S. Act, 1985 is to be taken into consideration whether that has been properly complied with or not on the part of the prosecution. As per the provision of section 57 of the N.D.P.S. Act, 1985 whenever any person makes any arrest or seizure under this act, he shall within forty-eight hours next after such arrest or

seizure make a full report of all the particulars of such arrest or seizure to his immediate official superior. Therefore, as per the provision of section 57 of the N.D.P.S. Act 1985, only that person concerned, who makes any arrest or seizure under this act, shall make a full report of all the particulars of such arrest or seizure to his immediate official superior.

But in this case, not a single document was produced by the prosecution to that effect that report was sent by one person who made arrest and seizure to his superior officer. Therefore, in my view, it is another lapse in prosecution case and the same was not cured by the prosecution in this case with the help of any evidence, either documentary or oral.

These two major lapses in prosecution case as discussed above are sufficient enough to vitiate the prosecution case. Though this court is not giving much reliance on the defence version, so far non-compliance of the provision of section 50 of the N.D.P.S. Act, 1985 is concerned, but from the aforesaid discussion it is very clear that some lapses are in existence in prosecution case due to non-compliance of section 42 and 57 of the N.D.P.S. Act, 1985 on the part of the prosecution and such lapses have vitiated the entire prosecution case. As a result, accused Uttam Kumar Pal cannot be held as guilty of committing offence punishable under section 17 of the N.D.P.S. Act, 1985, for the possession of 3 kg. opium poppy juice (psychotropic substance) and storing the same at his own residence for the use of commercial purpose without any valid licence in contravention of the provision of N.D.P.S. Act, 1985 and rules framed there under beyond any reasonable doubt and it will not be very wise to hold anybody of guilty of committing any offence within the shadow of doubt. Since the provision of the N.D.P.S. Act, 1985 are very stringent and speak for higher degree of punishment due to involvement of social perspective of the alleged crime, such provisions should be construed very carefully. So that it may not be misused. That is why Hon'ble Apex Court as well as various High Courts always speak in favour of giving reliance on compliance of various

provisions of the N.D.P.S. Act which are very relevant in conducting any proceeding under the N.D.P.S. Act, right from search and seizure.

Under the backdrop of the aforesaid consideration, this court is not inclined to decide the present case of alleged offence of carrying psychotropic substance within the shadow of doubt which could not be removed by the prosecution by adducing any cogent and corroborating evidence. In this case, prosecution has failed to prove its case beyond reasonable doubt against the accused person, Uttam Kumar Pal and as a result, he is entitled to get benefit of doubt.

Thus this court is inclined to hold the accused person is not found guilty of the offence as charged against him in this case. Accordingly the accused person namely Uttam Kumar Pal is exonerated from the charge as framed against him under the provision of section 17 of the N.D.P.S. Act, 1985.

Hence, it is

ORDERED

that the accused person, Uttam Kumar Pal is held not guilty of offence punishable under section 17 of the N.D.P.S. Act, 1985 and accordingly he is acquitted under section 235(1) of the Code of Criminal Procedure and exonerated from charge as framed against him.

Let the accused person be set at liberty at once and be discharged from his respective bail bonds.

The seized alamats, if any, be destroyed after the statutory period of limitation of filing appeal or revision, as the case may be, in compliance with the provision of the N.D.P.S. Act.

Let a copy of this judgment be sent to the District Magistrate, Suri, Birbhum.

Dictated & corrected by me.

Judge, Special Court under
NDPS Act, 1st Court, Suri.

Judge, Special Court under
NDPS Act, 1st Court, Suri.

