

**IN THE COURT OF THE SPECIAL JUDGE, I ADDITIONAL  
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER  
NDPS ACT, CHENNAI.**

**PRESENT: Tmt. S.Hermies, B.A., M.L., D.H.R.,  
I Additional special Judge,  
I Additional Special Court  
For Exclusive Trial of Cases Under  
NDPS Act, Chennai.**

**Friday the 06<sup>th</sup> day of December 2024**

**CALENDAR CASE No.12/2018**

**in**

**R.R.No.16/2013**

**in**

**O.S.No.6/2013-ACIU**

**CNR No. TNCH0A-000133-2018**

( On the file of the Assistant Commissioner of Customs, Prosecution Unit-AIR,  
New Customs House, Chennai )

|                        |                                                                                                                                                |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Complainant            | : <b>State: Represented by</b><br>The Assistant Commissioner of Customs,<br>Prosecution Unit-AIR, New Customs House,<br>Meenambakkam, Chennai. |
| Name of the accused    | : Ahamed Faizal, M/A.36 (2013),<br>S/o.Hayath Khan,<br>No.941, 1st Block, 20th Street,<br>Muthamil Nagar, Chennai.                             |
| Charge against accused | : U/s. 9(A) r/w 25A, 8(c) r/w 22(c), 8(c) r/w<br>23(c) of the NDPS Act.                                                                        |
| Plea of the accused    | : Pleaded not guilty                                                                                                                           |
| Findings of the Court  | The accused is found not guilty for the<br>offence U/s. 9(A) r/w 25A, 8(c) r/w<br>22(c), 8(c) r/w 23(c) of the NDPS Act<br>1985.               |

Order of the Court

In the result, the accused is found not guilty for the offence U/s. 9(A) r/w 25A, 8(c) r/w 22(c), 8(c) r/w 23(c) of the NDPS Act 1985 and hence the accused is acquitted from the charge levelled against him under section 258 BNSS.

(B) Property Order: \* M.O.1 to M.O.8 (A.No.29/2013 ) are ordered to be handed over to the committee constituted for destruction of Narcotic Drugs and Psychotropic Substances, after lapse of appeal period or after the disposal of appeal if an appeal is ever preferred.

Counsel for the State

Tr.N.Suresh Kumar,  
Special Public Prosecutor

Counsels for the accused

Mr.M.S.Ramesh, N.Kokila

Final Hearing on

: 19.11.2024

Judgment

: 06.12.2024

This case coming on 19.11.2024 for final hearing before me in the presence of Special Public Prosecutor, Tr.N.Suresh Kumar, for the state and of Mr.M.S.Ramesh, N.Kokila, Advocates for defence and heard both side arguments and upon perusing the records and having stood over for consideration till this day, this Court delivers the following:-

### **JUDGMENT**

#### **Alleged Offence:**

*The case arose out on an the information from the Assistant Commissioner of Customs that on 21.07.2012, narcotic drugs attempted to be smuggled out of India*

by concealing the same in an export consignment of pomegranates vide shipping Bil No.9941307 dated 20.07.2012 at Export shed, Air Cargo complex, Meenambakkam and one Ahamed Faizal who had complicity in the crime had been in abscondence and in this regard a letter said to have been received from Assistant Commissioner, Civil Suppliers and consumer protection department, and pursuant thereto, the officials of ACIU Visited the given address and the aforesaid person was not residing therein and in this regard, the owner of the premises had sent a communication to the officials of ACIU that his erstwhile tenant had moved to his own premises and his address said to have been provided by him. Pursuant thereto, the officials of ACIU visited the premises of accused Ahmed Faizal on 26.04.2013 at 5.00 p.m and search was conducted in all the three floors in the presence of two independent witnesses and within the fabric material bundles powdery substance of one dirty white colour and another crystalline white powder were found in transparent polythene covers weighing 7.140 kgs and 4.540 respectively. Representative samples were taken for chemical analysis and the mahazar was drawn in the presence of witnesses. In furtherance of the same, a special report u/s 57 had been submitted and further probe being conducted and the accused herein have been arrested for having committed the offence and a complaint had been filed before this court by the Assistant Commissioner of Customs, Prosecution Unit (Air) New Customs house Meenambakkam, Chennai for the alleged offence U/s. 9(A) r/w 25A, 8(c) r/w 22(c), 8(c) r/w 23(c) of the NDPS Act 1985. Hence this case.

2. The Learned Principal Special Judge, Special Court constituted exclusively for the trial of cases under EC and NDPS Act, Chennai had taken cognizance of the final report under section 36A(1)(d) of the Act and made over the case to this Court for trial.

3. On receipt of summons, the accused entered appearance through his counsel. The copies of records had been furnished by this Court to the accused, free of cost u/s.208 Cr.P.C.

4. In pursuance of the made over, the accused had appeared before this Court and upon consideration of the records of the case and the documents submitted therewith and on hearing the submissions of the accused and prosecution in this behalf, this Court considered that there were sufficient grounds for proceeding against the accused for the offences U/s. 9(A) r/w 25A, 8(c) r/w 22(c), 8(c) r/w 23(c) of the NDPS Act 1985 and hence charges were framed.

5. When the substances of the offence and charges framed against the accused U/s. 9(A) r/w 25A, 8(c) r/w 22(c), 8(c) r/w 23(c) of the NDPS Act 1985 was read over and explained to him in English, the accused pleaded not guilty to the charges and claimed to be tried. As such, this case was taken up for trial.

6. To substantiate the charges levelled against the accused, prosecution has examined PW1 to PW5 and Exhibits Ex.P.1 to Ex.P.12 and Material Objects M.O.1 to M.O.8 were also marked by the prosecution.

**The brief case of prosecution is as follows:**

7. PW1 is the Superintendent, Preventive Commissionerate, Customs House, Chennai -01. In the year 2013 he was working as a Preventive officer in Aircargo Intelligence Unit, Aircargo Complex , Meenambakkam. On 26.04.2013, a followup action relating to seizure of narcotic drugs attempted to export in a export consignment of Pomegranates and subsequent to receipt of a letter from Assistant commissioner, Civil Supply and Consumer Protection Department, Chidambaranar Zone, Chennai -01, the officers of ACIU visited the premises situated at old no. 1 and new no.1, Kannan Street, Krishnamoorthi Nagar, Chennai -118. The owner of the premises subsequently submitted a letter informing that Mr. Ahamed Faizal, who was staying at his house as a tenant had shifted and moved to his own premises situated at No. 941, 1<sup>st</sup> Block , 20<sup>th</sup> Street, Muthamil Nagar, Chennai -118. Based on this letter they visited the said premises along with the team of officers attached to ACIU at 5.00 p.m. on 26.04.2013 to execute search warrant no. 8 of 2013 dated 26.04.2013 issued by the Assistant Commissioner of Customs, Aircargo Intelligence Unit, Aircargo Complex, Meenambakkam, Chennai along with two independent witnesses. They found Ahamed Faizal therein along with his brother-in-law. Immediately the search was conducted. The premises is a 3 storeyed building. Mr. Basheer Ahamed informed them that accused Ahamed Faizal is staying at first floor and he is staying at second floor. Ground floor was used as a godown to pack textile

materials. During the search in one of the rooms, 25 bundles of fabric materials were found and on thorough examination, the fabric material was found wrapped around a rectangular cardboard which were found to be unusually heavy. The same were cut opened and each was found to contain two numbers of long transparent polythene covers containing some powdery substances. On careful examination of polythene covers, 28 numbers of covers were having dirty white color powder and 22 numbers of covers containing white color crystalline powder. The same were individually weighed and found to weigh 7.140 and 4.540 kilo grams after the contents of each long transparent covers were transferred category wise into 4 numbers of bigger polythene covers. The two bigger polythene covers containing dirty white powder were marked as A and B and other two bigger polythene covers containing white crystalline powders were marked as C and D. Thereafter, 3 numbers of representative samples each weighing 10 grams were drawn from polythene covers A and B and were marked as S1, S2 and S3 in 3 transparent polythene covers. Similarly 3 numbers of representative samples each weighing 10 grams were drawn from the polythene covers C and D and were marked as S4 , S5 and S6 in three transparent polythene covers. Before drawing the above said samples a test was conducted on the above said two categories of powdery substances using the narcotic drugs detection kit and precursor chemical detection kit which showed the dirty white powder tested positive for 3,4-Methylene dioxy Phenyl-2 – Propanone or 1- phenyl

- 2 – propanone and the white crystalline powder tested positive for pseudoephedrine. As the dirty white powder packed in above said two polythene covers A and B and the white crystalline powder packed in 2 polythene covers C and D along with their representative samples were suspected to be narcotic drugs the same were seized under the mahazar for further action under the provisions of Customs Act r/w provisions of NDPS Act 1985 in the presence of accused Ahamed Faizal, Shri. Basheer Ahamed and two independent witnesses. The packing materials namely 25 bundles of fabric materials, 25 numbers of rectangular cardboard pieces and 50 numbers of long transparent covers which were used for concealing the above said suspected narcotic drugs were also seized under the mahazar for further action as material objects under the provisions of Customs Act 1962 r/w the provisions of NDPS Act 1985 . During the search the following documents were also found in the first floor of the premises which were also seized under the mahazar for further action. Those documents were Driving licence of accused Ahamed Faizal, Family card of Shri. Ahamed Faizal, UCO Bank Pass book of Shri. Ahamed Faizal, Account no. 25190110015483, Unsigned and undated letter addressed to Commissioner of Customs, import / export department , JNPT/ Mumbai/ ACC along with 7 photocopies of enclosures, Annexure -I of Trendz INC dated 25.10.2012, Form no. 9737 dated 13.02.2009 issued by Government of Tamil Nadu with 6 enclosures, Application form for Provisional registration as small scale industries in the

name of INOX mobiles containing pages 1 to 6 and 8, 10 numbers of unsigned and signed invoice cum packing list and packing list, One CPU with brand Zebronics. The seized powder suspected to be narcotic drugs packed in 4 polythene covers A, B, C and D were repacked in a microtech original cardboard box and sealed with Customs seal no. 37 and representative samples kept in 6 transparent polythene covers were individually packed in 6 numbers of light green color envelopes and sealed with in customs seal no. 37. The material objects were repacked in a brown colour cardboard carton box and sealed with Customs seal no.37 and marked as M1. Apart from the above, the textile material, packing tools and polythene covers of various sizes which were found during the search with tout any concealment were kept in a separate room in the ground floor of said premises and the said ground floor of said premises were locked and sealed with customs seal no. 37. The mahazar ended at 22.00 hours. Before starting the search, they along with two independent witnesses presented themselves for a personal search of accused Ahamed Faizal and Shri. Basheer Ahamed. They politely declined. After the search, the officers along with the independent witnesses once again offered for personal search which was politely declined by the accused Ahamed Faizal. Mahazar was drawn by him and the seizure was effected by him. The mahazar was signed by two independent witnesses, N. Anand and K. Muthukumar and by the accused Ahamed Faizal and Shri. Basheer Ahamed and search was conducted in the presence of Mrs. Ancy

Philip, Superintendent, ACIU. The mahazar is marked as Ex.P1. Copy of the driving licence of Shri. Ahamed Faizal and copy of the Ration card of Shri. Ahamed Faizal is marked as Ex.P2 and Ex.P3. Based on the letter dated 26.04.2013 given by Shri. Abdul Majed to the department, stating that the accused Ahmed Faizal was a tenant and subsequently he vacated the house and shifted to Muthamil Nagar and had given his new address as 1/940, Faizal kalam Manzil, 20<sup>th</sup> Street, Muthamil Nagar, Chennai -118 and letter given by Abdul Majed is marked as Ex.P.4. Based on the said letter, the Assistant Commissioner of Customs issued a search warrant number 8/2013 dated 26.04.2013. Based on the warrant, they conducted the search in the said premises. Before commencing the search, the accused Ahmed Faizal was asked whether he preferred to be searched before the Magistrate or Gazetted officer. He replied that he preferred to be searched before the Gazetted officer and search was conducted before Tmt.Ancy Philip, Superintendent of Customs who is a Gazetted officer. The mahazar was completed at 22.00 hrs on the same day. The summons was issued to Ahmed Faizal and he came to office and gave a voluntary statement. In his voluntary statement, he admitted his guilt and based on his statement and seizure at his house, he was arrested under the provisions of NDPS Act on 27.04.2013. The arrest warrant is marked as Ex.P.5. He was remanded to Judicial custody on 27.04.2013. He had submitted a report under section 57 of NDPS Act to the Superintendent and Assistant Commissioner of Customs. 57 Report is marked as Ex.P.6. The petition

for submission of property was filed before the Hon'ble NDPS Court on 06<sup>th</sup> May 2013. The petition is marked as Ex.P.7 and as directed by the Hon'ble Court, test memo for sending the samples for analytical examination was filed on 06.05.2013 and the same is marked as Ex.P.8. As directed by the Hon'ble Court on 06.05.2013, PW1 had handed over the samples to Customs House Laboratory for analytical test. The letter given by the Hon'ble Court dated 06.05.2013 is marked Ex.P.9. The test memo dated 06.05.2013 filed by PW1 is marked as Ex.P.10. On 27.06.2013 PW1 collected the test report along with remnant samples and submitted before the Hon'ble Court. The purple colour Microtek carton box containing Pseudo Ephedrine 4.540 kgs and Ketamine 7.140 kgs ( Box sealed with Customs seal and Court seal) is marked as PMO1. (two nos) one sealed brown colour carton box containing fabrics and polythene covers and packing tools is marked as PMO2 (Box sealed with Customs seal and Court seal) The remnant samples S1, S4 and the samples S2, S3, S5, S6 are produced before the court and S1 to S6 are marked as PMO3 to PMO8. PW2 is the Superintendent in Confidential Section in Customs House, Chennai. She worked as Intelligence officer in Aircargo Intelligence Unit at Aircargo Customs, Meenambakkam. A seizure of Ketamine Hydrochloride and pseudo ephedrine was effected on 26.04.2013 from the godown of residential premises of Shri. Ahamed Faizal at Kodungaiyur. Mahazar was drawn to that effect. In continuation to that on 27.04.2013. Ahamed Faizal was summoned and he appeared before PW2 and

had given voluntary statement on 27.04.2013. The voluntary statement was written by her in her own handwriting. The statement of accused is marked as Ex.P.11. PW3 hails from Mannivakkam of Chennai. On 26.04.2013 he had gone to his sister's house. Whiles, some officials from customs had come to the place to search the house opposite to his sister's house. He informed that there was contraband inside fruits which were about to be exported. The house which was about to be searched had two floors. Ahamed Faizal and Basheer Ahamed had been residing in the 1<sup>st</sup> as well as 2<sup>nd</sup> floor. The ground floor had been used as godown. The aforesaid person consented for a search. While searching godown, there was a big cardboard box within which fabric items were found. While examining the cardboard, a thick cover was found. Inside the cover powder had been placed. Approximately 25 covers were found inside the thick cover. The official had taken 10 grams and examined the same in the detection kit. It was found to be a contraband. The weight of one contraband was found to be 7 kgs and another 4 kgs. They packed it in a single bundle. The officials had also gone to the 1<sup>st</sup> floor and recovered the passport and ration card and computer of the aforesaid persons. They prepared a mahazar in the presence of PW3. He signed in the mahazar. PW3 had also signed in the case properties which were assigned as S1 to S6 by the officials. PW4 is the Assistant Chemical Examiner in Customs House Laboratory, Chennai. She received two green cloth line samples on 6/5/2013 marked as S1 and S4 along with Court letter and test memo brought by P.S.Ganesan, IO, Air Cargo Intelligence,

Meenambakkam. The samples were registered under lab number 607 and 608 dated 6/5/2013. On opening the samples it was found to contain off white powder and white crystalline powder respectively placed in plastic pouch. Weight of the samples along with plastic pouch is 12.28 gm and 13.06 gm respectively. The samples were analysed as per standard methods given in pharmacopoeia and Ex.P12 report was given by her. Lab No.607 samples S1 answered test for Ketamine Hydrochloride. Lab No.608 samples S4 answered test for Pseudoephedrine hydrochloride. PW5 hails from Kolathur Chennai. In the month of April 2013 he was residing at Muthamizh Nagar of Chennai. On 26.04.2013, an official by name Ganesan had come to the spot. He stated that a case of exporting contraband in Pomegranates had been pending against Ahamed Faizal. So he stated that the officials intended to search the house of Ahamed Faizal. They have shown the warrant to him. When they had searched the ground floor, there were new cloths in a parcel. Ahamed Faizal was in the spot. When they verified the parcel, there was a plastic cover. There were 50 packets in the cover. The powder in it was orange as well as half white in colour. They examined it with the detection kit. It was found to be of Pseudo-ephedrine. It weighed 7 kgs as well as 4 kgs respectively. Total weight was 10 kgs. They lifted 10 grams each as samples and packed it separately and had sealed the same. They went to the 1<sup>st</sup> floor. In the 1<sup>st</sup> floor Ahamed Faizal as well as brother-in-law Bazeer Ahamed were found. The officials had recovered identity card, bank pass book from the premises. They prepared a mahazar and he had

signed in the mahazar.

8. For the purpose of enabling the accused, personally, he was explained with all the circumstances appearing in the prosecution evidence against him u/s.313(1) (b) Cr.P.C and he urged that the entire allegation against him as false. No defence witnesses were examined.

**9. The Point for determination:**

**Whether the prosecution has proved the offence alleged to have been committed by the accused beyond all reasonable doubt?**

The succinctly stated facts of the prosecution is that narcotic drugs were attempted to be smuggled out of India by concealing the same in an export consignment of pomegranates vide shipping Bil No.9941307 dated 20.07.2012 at Export shed, Air Cargo complex, Meenambakkam and in this regard one Ahamed Faizal who alleged to have made an attempt to export narcotic drug had been in abscondence and in this regard a letter said to have been received from Assistant Commissioner, Civil Suppliers and consumer protection department, and pursuant thereto, the officials of ACIU Visited the given address and the aforesaid person was not residing therein and in this regard, the owner of the premises had sent a communication to the officials of ACIU that his erstwhile tenant had moved to his own premises and the address of the accused said to have been provided by him. Pursuant thereto, the officials of ACIU visited the premises of accused Ahmed Faizal on 26.04.2013 at 5.00 p.m and a search was conducted in all the three floors

in the presence of two independent witnesses and within the fabric material bundles, powdery substance which was a dirty white colour and another crystalline white powder found in transparent polythene covers weighing 7.140 kgs and 4.540 respectively. Representative samples were drawn and test was conducted on the aforesaid two categories of powder with Narcotic drugs detection kit and precursor chemical detection kit and those powders tested positive for methylenedioxyphenyl-2 propanone and pseudo ephedrine. The accused confessed to have committed the offence of smuggling of narcotic drugs with his cohorts one Sayyed and CHA Radhakrishnan. With the aid of Sayyed, he said to have concealed contraband in pomegranates and exported it to Malaysia on several earlier occasion. Subsequently, investigation being conducted and charge sheet laid against the accused by way of a complaint under several provisions of NDPS Act. Having taken cognizance, summons was served upon the accused and the charges were framed and as the accused pleaded not guilty, trial commenced. The defence put forth would be multifaceted. Inadmissible confession inter alia non compliance of mandatory requirement in section 42 as well as 52A has been put forth. Now whether the prosecution has proved the offence beyond all reasonable doubt and if so whether the reverse burden has been discharged by the accused has to be ascertained.

**10.** The prosecution has examined the officer who conducted search in the premises bearing New No.1, Kannan Street, Krishnamoorthi Nagar, Chennai as

PW1. He would narrate the factual details in consonance with the facts pleaded in the complaint. He would depose that while he was working as Preventive officer in Aircargo Intelligence Unit, Aircargo Complex, Meenambakkam, a letter was received from Assistant Commissioner, Civil Supply and consumer protection department pertaining to the attempted export of narcotic drugs concealed in pomegranate consignment. In furtherance of the receipt of the aforesaid communication, the officials of ACIU on 26.04.2013 said to have visited the premises bearing New No.1, Kannan Street, Krishnamoorthi Nagar, Chennai in search of accused Ahmed Faizal and it has been testified that the owner of the premises had given an information in writing intimating the new address of his erstwhile tenant who is the accused herein. In this regard, a search warrant said to have been issued bearing number 8/2013 by Assistant Commissioner of Customs, AIR Cargo intelligence Unit, Meenambakkam, Chennai. Pursuant thereto, the team of officers attached with ACIU said to have inspected the premises at 5.00 p.m with two independent witnesses and while during search, contraband alleged to have been found concealed within the textile fabrics in carton boxes.

**11.** According to prosecution, in furtherance of the search proceedings, mahazar was drawn by PW1. The mahazar drawn has been marked as Ex.P1. Perusal of Ex.P1 mahazar would indicate that the search was effected by Thiru.Ganesan, I.O who is PW1 herein. It is significant to note that PW1 was not a gazetted officer on the date of search. Now whether the search officer had acted in

accordance with the mandatory requirements of the provisions of the NDPS Act and whether he had ever been authorized to conduct search or he himself is an enumerated officer who complied with the provisions of section 42 of the NDPS Act has to be analysed.

**12.** Coming to the genesis of the occurrence, the case of the prosecution is that the accused had already made an attempt to smuggle contraband by concealing the same in the export consignment of pomegranate vide shipping bill number 9941307 dated 20.07.2012. No evidence forthcoming regarding the aforesaid shipping bill. Whether the accused was the person who made an attempt to smuggle narcotic drugs on an earlier occasion vide the aforesaid shipping bill is a relevant fact which would be of paramount importance regarding the factual details narrated in the present case. However, the prosecution has miserably failed to produce any evidence regarding the earlier alleged attempt of smuggling of contraband vide shipping bill dated 20.07.2012. Whether, any case had been registered in furtherance of the seizure of aforesaid consignment against any persons had not been substantiated. No investigation has been conducted in this regard. No iota of evidence to prove the connection of accused with that the earlier alleged attempt to smuggle narcotic drugs.

**13.** According to the case of prosecution a letter was received from Assistant Commissioner, Civil Supply and consumer protection department, ACIU and

subsequently the officials of ACIU said to have visited the residential premises situated at Kannan Street, Krishnamoorthy nagar wherein the accused said to have been residing. The prosecution has miserably failed to produce the letter said to have been received from the Assistant Commissioner, Civil Supplies and consumer protection department. It has been specially pleaded in the complaint that the officers of ACIU visited the aforesaid premises on 26.04.2013 at about 5.00 p.m. On what authority the team had gone to the spot for search is not forthcoming. PW1 would categorically state that the investigation was ongoing investigation and search warrant was issued on 26.04.2013. He would also categorically state that search warrant was issued to him on 26.04.2014 in the afternoon. The relevant portion of his evidence is extracted hereunder.

***“ Since it was ongoing investigation search warrant was issued on 26.04.2013.”***

***“ Letter was not placed before me. But the search warrant was issued on 26.04.2013 in the afternoon.”***

14. However, prosecution has not produced any such search warrant before the court. It is conspicuously absent. Admittedly the search had been conducted during night time. Ex.P1 is the mahazar said to have been drawn at the spot. The time of commencement of mahazar is noted as 17.00 hours and ending time is shown as 22.00 hours in Ex.P1 mahazar. In such case it is obvious that the search and seizure was conducted in the premises after sun set. The learned defence

counsel would vehemently contend that the mandatory requirement contemplated under section 42 of the NDPS Act had not been complied with. So far as PW1 search officer is concerned, he was not a gazetted officer during the relevant point of time. In such case PW1 had no right to enter the building and conduct search and seizure during night without authorization.

15. Learned Special Public Prosecutor, a gazetted officer was in the team. Although Superintendent had affixed his signature in Ex.P1 he had not seized any properties. Infact, PW1 Ganesan said to have been authorized to conduct search. PW1 Ganesan had not taken down the intelligence gathered by him u/s 42(1) of the NDPS Act. PW1 Ganesan without any authorization had no right to enter the building and conduct search and seizure between sunset and sunrise. Here it would be appropriate to extract the provisions of section 41 as well as 42 of the NDPS Act 1985 for better understanding.

**Section 41 of NDPS Act 1985 read as follows:**

*(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second-class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or*

*other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.*

*(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such person or search a building, conveyance or place.*

*(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.*

**Section 42 of NDPS Act 1985 reads as follows:**

*(1) Any such officer (being an officer superior in rank to a peon, sepoy or*

constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--

*(a) enter into and search any such building, conveyance or place...*

16. The learned defence counsel would rely upon a judgment reported in-

**CDJ 1994 SC 057**

**State of Punjab**

**Versus**

**Balbir Singh**

Wherein the Hon'ble Apex Court held that during search and seizure – under section 41(2) only the empowered officer can give authorisation to his subordinate

*officer to carry out arrest of a person or search – Contravention would affect the prosecution and vitiate the conviction – Provisions of Section 41(2) are mandatory to this effect. Under Section 42(1) the empowered officer if has a prior information should necessarily take down in writing- If the officer has reason to believe from personnel knowledge that offence under Chapter IV have been committed, he may carry out arrest or search without warrant between sunrise and sunset- This provision does not mandate that he should record his reasons of belief, but under Section 42(1) if such officer has to carry out search between sunset and sunrise, he should record the ground of his belief. This is mandatory.*

17. However in the present case no search warrant had ever been issued in favour of PW1 search officer who is a non gazetted ranking official. Only when authorization or search warrant had ever been issued, PW1 could enter into the premises and conduct search by day or by night. So search was not conducted in accordance to section 41 of the NDPS Act 1985.

17. That apart, no search proceeding was ever initiated according to section 42 of the NDPS Act 1985. Infact, no information had ever been recorded in writing by PW1. It is also not the case of the prosecution that PW1 had received secret information and it was reduced in to writing. As per the case of prosecution that the case emanates from that of the seizure of consignment of pomegranate concealed with contraband vide shipping bill 9941307 dated 20.07.2012 and the subsequent communication said to have been made by Assistant Commissioner, Civil Supplies

and consumer protection department. As already discussed above, the shipping bill as well as the said communication not forthcoming. The prosecution has relied upon a purported letter given by the owner of the premises bearing No.1, Kannan Street, Krishnamoorthy Nagar. As per the pleading of prosecution, the officials of the ACIU visited the premises situated at new No.1, Kannan Street, Krishnamoorthy Nagar. The date on which the visit was made has not been putforth. It has been stated as if the owner of the aforesaid premises by name Ahamed Faizal had given letter to the officials on 26.04.2013 intimating the present address of the accused who was his erstwhile tenant. The purported letter has been marked as Ex.P4. The aforesaid person has not been quoted as a prosecution witness. Infact, Ex.P4 is not a secret information received by the officials. It is only an information regarding the present address of the tenant by the said owner. Infact, even treating the same as an information, it should have been reduced in to writing. Here it was not done so. It is also not the case of the prosecution that the secret information received was reduced in to writing. It has also to be pointed out that the recovery was not a chance recovery. Here the search was conducted during night. PW1 a non gazetted officer without any authority had no right to search the premises during night.

**18.** The learned public prosecutor would contend that there was a gazetted officer in the team of officials. It has also been putforth that she had affixed her signature in Ex.P1 mahazar. It would be hardly be of any help to the case of prosecution. She had not been quoted as a prosecution witness and had never been

examined before the court. Still further, the seizure officer was PW1. He was not a gazetted officer. In such case, he had no authority to search the premises and effect seizure during night according to section 42(1) of NDPS Act. Mandatory requirement had not been adhered to. Here it would be relevant refer a judgment re

***(2000) 2 Supreme Court Cases 513***

***ABDUL RASHID IBRAHIM MANSURI***

***Versus***

***STATE OF GUJARAT***

*Wherein the Hon'ble Supreme Court held that Search and seizure – Requirements under sec.42 of taking down in writing the information received and sending a copy thereof to the immediate official superior – Non-compliance with – Effect – Action taken on unrecorded information, held, would become suspect and one causing prejudice to the accused but would not ipsofacto vitiate the trial.*

**19.** Still further, it would be relevant to refer a judgment rendered by Hon'ble Supreme Court reported in

***(2013) 2 Supreme Court cases 212***

***SUKHDEV SINGH***

***Versus***

***STATE OF HARYANA***

*Wherein the Hon'ble Supreme Court held that Requirement of writing down*

*and conveying information to immediate superior official – Mandatory nature of – Need for strict compliance – Object and purpose of ensuring strict compliance with sec.42 – Held, sec.42 is a mandatory provision which ought to be construed and complied with strictly – Compliance of furnishing information to the superior officer should be forthwith or within a very short time thereafter and preferably prior to recovery.*

20. The defence counsel would rely upon a judgment rendered by Hon'ble Supreme Court reported in

***(2009) 8 Supreme Court cases 539***

***Karnail Singh***

***Versus***

***State of Haryana***

Wherein the judgment of Abdul Rashid and Shajan Abraham were dealt with and the court had come to a conclusion that the effect of two decisions is that the compliance with the requirements of sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally proceed the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search entry and seizure.

21. Having taken all the aforesaid facts, it is manifested that the prosecution

had neither complied with the mandatory requirement u/s 41 of NDPS Act nor 42 of the NDPS Act. Infact, the case of prosecution according to the evidence would fall under section 41 of the NDPS Act. The residential premises was searched upon during night. However, mandatory requirements u/s 41 is not complied. No authorization or search warrant forthcoming. Non compliance of the aforesaid provisions is fatal to the case of prosecution.

22. The learned defence counsel would putforth that the prosecution is duty bound prove ownership of the premises wherein recovery of narcotic drugs alleged to have recovered. In this regard, the learned defence counsel would rely upon a judgment rendered by Hon'ble Supreme court reported in

***(2009) 10 SCC 632***

***Om prakash @ Baba***

***Versus***

***State of Rajasthan***

Wherein the Hon'ble Apex court had in extenso dealt with the importance of proving possession and ownership of the premises wherein contraband were seized. It was held that there was no evidence to prove the exclusive possession of appellant therein and the ownership of the house.

23. Still further, learned defence counsel would rely upon a judgment rendered by Hon'ble Supreme Court reported in

***(2009) 12 Supreme Court Cases 303***

***State of Punjab******Versus******Malkiat Singh***

Wherein it was held that when contraband recovered from a room belonging to one P- Prosecution claiming that said room was leased out to respondent – accused. However, neither P examined, nor copy of lease deed produced – Besides, no evidence was adduced to show possession of room by respondent, who admittedly was not the owner of the room, and neither any question regarding the same put to him – prosecution version vulnerable.

**24.** So far as the case at hand is concerned, accused is said to be the owner of the premises. In this regard, neither any documentary evidence nor oral evidence forthcoming. It has been pleaded that the wife as well as the brother-in-law of accused were examined before the officials and they said to have admitted the ownership of the land. However, no documents forthcoming to substantiate the same. Some incriminating documents said to have been recovered from the premises while during search. The documents which are the ration card as well as driving licence of accused said to have been recovered are marked as Ex.P2 as well as EX.P3 respectively. Neither in Ex.P2 nor in Ex.P4 the address noted in the complaint and was searched upon which situate at No.941, 1<sup>st</sup> Block, 20<sup>th</sup> street, Muthamizh nagar, Chennai-118 reflect. Still further, neither the wife of the accused nor brother-in-law who are claimed to be the owners had not been arrayed as

accused. They have not been quoted even as a witness to prove possession. No sale deed forthcoming. None of the adjacent owners have been examined. Hence the possession or ownership of the accused after the residential premises wherein contraband said to have been recovered has not been substantiated. It is an infirmity which would hit at the root of the case.

25. PW1 would categorically state as if Ex.P4 letter was received by post. Admittedly no postal cover forthcoming. Even the seal of New Customs House, Prosecution Unit has not been affixed in the letter. Only the seal of the court has been affixed. Postal cover not forthcoming. Admittedly it has not been produced. The relevant portion of the evidence is excerpted hereunder.

***“ Q - How did you received the said letter?***

***A- We received it through post.***

***Q- Have you produced the Tapal Cover?***

***A- No.***

***Q- I put it to you that the preventive officer has not signed the letter but it was the initial of the magistrate which is affixed in all the pages?***

***A-Yes.”***

26. Grave suspicion prevails over the authenticity of the aforesaid document. According to the case of prosecution 28 numbers of covers having dirty white colour powder and 22 numbers of cover having white coloured crystalline powder were found to have been concealed within the bundles of fabric materials. The

weight of the same of said to be of 7.140 kgs and 4.540 kgs respectively. Samples said to have been drawn and when it was tested with drug detection kit, it is tested positive for Methylenedioxyphenyl, Pseudoephedrine. Two independent witnesses have been examined as PW3 as well as PW5. One of the witness claimed himself to be the owner of opposite premises and another one PW3 his relative. Admittedly PW3 is a CHA (Customs House Agent) and PW5 is his nephew. Admittedly PW3 has acquaintance with the officials who said to have inspected the premises. The evidence of PW3 as well as PW5 are quite incredible. Even OS number normally which would be allotted prior to seizure was said to be allotted subsequent to seizure. The relevant portion of the evidence is quoted below.

***“ Q- Who allotted the OS number for this case, and when it was allotted the case.***

***A- It is the running number allotted in office after the seizure.”***

That apart, no signature was ever obtained from the accused in the case property alleged to have been recovered from the premises. The relevant portion of evidence of PW1 is extracted hereunder.

***“Accused signature is not available in the property and in the sample.”***

No plausible explanation given by the prosecution for not obtaining the signature in the material objects. It is also an infirmity in the case of prosecution.

27. In furtherance of the alleged seizure, the accused was called upon before

the officials in the office. PW2 who is the Superintendent would categorically state that the accused had confessed to have committed the offence. The learned counsel would contend that the confession is in admissible evidence.

As rightly pointed out the purported confession is not admissible in evidence. It would not be a reliable piece of evidence.

**28.** The prosecution would also rely upon the lab report marked as Ex.P12 through PW4 the seized Ketamine as well as Pseudoephedrine were sent to the forensic lab for chemical analysis. The test memos were prepared for each and every contraband and it was sent to the lab for conducting qualitative analysis. The test memos have been marked as Ex.P8 as well Ex.P10 respectively. The letter addressed to the Customs House Laboratory by the court has been marked as Ex.P9. The test report has been marked as Ex.P12. The chemical examiner who conduct the test has been examined as PW4. He has categorically testified in consonance with the report provided. According to his report and testimony, the sample were in the form of white powder and white crystalline powder respectively. Likewise the samples in the form of white powder as well as white crystalline powder were tested positive for Ketamine hydrochloride and Pseudo ephedrine hydrochloride. Here it is to be emphasised that Ex.P12 ipsofacto would not sufficient to prove the offence alleged to have been committed, when the prosecution has miserably failed to prove the alleged recovery in the manner as asserted. The learned defence counsel has also putforth an argument relying upon

judgments that the samples were not drawn before Judicial Magistrate. No doubt, sample has not been drawn before the Magistrate.

29. So far as presumption regarding mens rea and possession of contraband is concerned, section 35 and 54 of the NDPS Act impose reverse burden upon the accused. The relevant provisions are extracted hereunder for better understanding:

**Section 35 :**

***“presumption of culpable mental state-(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.***

***Explanation- In this section “culpable mental state” includes intention, notice knowledge of a fact and belief in, or reason to believe, a fact.***

***(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability”.***

**Section 54:**

***“Presumption from possession of illicit articles- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of-***

***(a) any narcotic drug or psychotropic substance or controlled substance:***

***(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated:***

***(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance: or***

***(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily”***

*30. The Hon'ble Apex Court dealt with in extenso regarding the burden of proof by prosecution when there is a reverse burden/presumption laws in the judgment reported in*

***2018(1)SCC) (CrI)711***

***Goraknath VS State of Bihar***

*Wherein it was held by the Hon'ble Supreme Court that the NDPS Act provides for a reverse burden of proof upon the accused, contrary to the normal rule of criminal jurisprudence for presumption of innocence unless proved guilty. This shall not dispense with the requirement of the prosecution to having first establish a prima facie case, only whereafter the burden will shift to the accused. The mere registration of case under the Act will not ipso facto shift the burden on the accused from the very inception compliance with statutory requirements and procedures shall have to be strict and the scrutiny stringent. If there is any iota of doubt the benefit shall have to be given to the accused.*

**31.** Section 35 of the Act provides for presumption of culpable mental state. It also provides that the accused may prove that he had no such mental state with respect to the act charged as an offence by the prosecution. Section 54 of the Act places the burden of proof on the accused as regarding the possession of the contraband to account for the same satisfactorily.

**32.** He has further relied upon a Judgment by the Hon'ble High Court in

***Crl.Appeal No.204/2018***

***Versus***

***State of Hon'ble Madras High Court***

Wherein it would held that under section 54 of the NDPS Act is not for possession but for illegitimacy. If the possession is proved, presumption unless rebutted is the possession is illicit. Under this Act, the possession of psychotropic substance and narcotic drugs by certain persons is permissible under certain circumstances. For the said reason, Section 54 of the Act gives a presumption which could be rebutted by the possessor that his possession of the said article is legal. As noted, since the prosecution has failed to prove the recovery of contraband from the appellant, by applying section 54 of the NDPS Act, he cannot be convicted. Hence the judgment of the trial Court is set aside.

**33.** So far as the case at hand is concerned, the prosecution has miserably failed to prove the initial burden and the fundamental facts have not been established. The possession of Pseudo ephedrine Hydrochloride as well as

Ketamine Hydrochloride by the accused has not been established by the prosecution. The ownership and possession of the premises not proved. A purported letter given by the owner marked as Ex.P4 has been relied upon. The author of the letter has not been examined. No documents forthcoming to prove the accused along had been residing in the aforesaid premises at the time of conducting search. No authorization or permission had been obtained in writing as contemplated in the provision by the officials who had search the premises. The warrant referred not forthcoming. Neither section 41 nor section 42 had ever been complied. In such case, no burden is cast upon the accused to discharge the onus of proof. The essential ingredients of the offence alleged to have been committed by the accused has not been fulfilled and proved. The infirmities in the case of prosecution should go in favour of the accused. The prosecution has failed to prove the case beyond all reasonable doubts. From the analysis so far and having taken both the factual and legal aspects in to account, this court comes to the irresistible conclusion that the accused is not found guilty and in turn entitled for an acquittal.

In the result, the accused is found not guilty for the offence U/s. 9(A) r/w 25A, 8(c) r/w 22(c), 8(c) r/w 23(c) of the NDPS Act 1985 and hence the accused is acquitted from the charge levelled against him under section 258 BNSS.

(B) Property Order: \* M.O.1 to M.O.8 (A.No.29/2013 ) are ordered to be handed over to the committee constituted for destruction of Narcotic Drugs and Psychotropic Substances, after lapse of appeal period or after the disposal of appeal

if an appeal is ever preferred.

//Dictated by me, typed by Steno - typist directly in the system, corrected and pronounced by me in open court, this the 06<sup>th</sup> day of December 2024 //

**SPECIAL JUDGE,  
I ADDITIONAL SPECIAL COURT FOR EXCLUSIVE  
TRIAL OF CASES UNDER NDPS ACT CHENNAI.**

**Prosecution side witnesses:-**

- |     |                                                                                        |
|-----|----------------------------------------------------------------------------------------|
| PW1 | Mr. P.S.Ganesan, Superintendent, Preventive Commissionerate, Customs House Chennai     |
| PW2 | Mrs. Hema Karthikeyan, Superintendent, Confidential section in Customs House, Chennai. |
| PW3 | Mr.Kumar @ Muthukumar,                                                                 |
| PW4 | Mrs.Gandhimathi, Assistant Chemical Examiner, Customs House Laboratory, Chennai.       |
| PW5 | Mr.Anand                                                                               |

**Prosecution side Exhibits:-**

- |        |                                                                                                             |
|--------|-------------------------------------------------------------------------------------------------------------|
| Ex.P1  | Mahazar                                                                                                     |
| Ex.P2  | Copy of Ration card of accused Ahamed Faizal                                                                |
| Ex.P3  | Copy of driving licence of accused Ahamed Faizal                                                            |
| Ex.P4  | Letter given by Abdul Majed to the Assistant Commissioner of Customs                                        |
| Ex.P5  | Arrest warrant of accused Ahamed Faizal                                                                     |
| Ex.P6  | Section 57 Report                                                                                           |
| Ex.P7  | Petition for submission of properties                                                                       |
| Ex.P8  | Test Memo filed by the complainant for sending the samples to analytical examination                        |
| Ex.P9  | Letter given by the court to the Joint Director Central Revenue Laboratory, Customs House, dated 06.05.2013 |
| Ex.P10 | Test memo dated 6.05.2013 given by PW1                                                                      |
| Ex.P11 | Voluntary statement of accused Ahmed Faizal                                                                 |
| Ex.P12 | Lab report dated 27.06.2013 given by Assistant Chemical Examiner, Customs House Laboratory                  |

**Defence Side Witnesses:-** Nil

**Defence Side Exhibits:-** Nil

**Material Objects:-**

- |       |                                                                                      |
|-------|--------------------------------------------------------------------------------------|
| M.O.1 | Purple colour Microtex Carton box containing Pseudo Ephedrine and Ketamine (two nos) |
| M.O.2 | Brown colour carton box contain fabrics and polythene covers and packing tools       |
| M.O.3 | S1- Remnant sample                                                                   |
| M.O.4 | S2- sample                                                                           |
| M.O.5 | S3- sample                                                                           |
| M.O.6 | S4- Remnant sample                                                                   |
| M.O.7 | S5- sample                                                                           |
| M.O.8 | S6- sample                                                                           |

**SPECIAL JUDGE,  
I ADDITIONAL SPECIAL COURT FOR EXCLUSIVE  
TRIAL OF CASES UNDER NDPS ACT, CHENNAI.**

**Copy to: The Special Public Prosecutor, NDPS Act Cases, Chennai.**