

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal (Sb) No. 441/2026

State Of Rajasthan, Through Pp

----Appellant

Versus

1. Ramchander S/o Shri Dayaram Nath, Niwasi 49 L.I.w. Narsinghpura Police Thana Ghamoorwali, Tehsil Padampur Distt. Sri Ganganagar.
2. Bhairaram Nath @ Sandeep S/o Palaram Nath, 49 L.n.w. Narsinghpura, Police Thana Ghamoorwali, Tehsil Padampur Distt. Sriganganagar.

----Respondents

For Appellant(s)	:	Mr. N.S. Chandawat, Dy.G.A.
For Respondent(s)	:	Mr. Sunil Vishnoi

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

25/02/2026

1. The present appeal has been instituted under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assailing the judgment dated 21.11.2024 rendered by the learned Special Judge NDPS Act Court Sri Ganganagar in Special Sessions Case No.33/2022. By the impugned judgment, the learned trial court acquitted the respondents from the charges under Sections 8/22 & 8/22 read with Section 29 of the NDPS Act 1985, extending to them the benefit of doubt.

1.1. Aggrieved by the said acquittal and questioning the legality and propriety of the findings recorded by the court of first instance, the present appeal has been preferred seeking reappraisal of the evidence and reversal of the order of acquittal.

2. The brief facts giving rise to the present appeal, as borne out from the record, are that on 05.02.2022, Sub-Inspector Babu Ram of Police Station Sadar, Sri Ganganagar, while on routine patrol duty along with the police party, reached at about 5:45 PM near Village 4 ML Nimbawali. At the far end of the village, on the roadside, a Swift Dzire car was noticed, near which a person was standing in a suspicious manner. On noticing the police party, the said individual became visibly perturbed and hurriedly attempted to conceal himself behind the vehicle and thereafter abruptly opened the door of the car, sat inside and tried to start it. His conduct aroused suspicion, whereupon the police party apprehended him and upon inquiry he disclosed his name as Ramchandra.

2.1. The key of the vehicle was obtained from him and a search of the car was conducted. During the search, a yellow plastic jerrycan having a capacity of approximately five litres was found lying on the rear seat of the vehicle. Upon opening the lid of the said container, several strips of tablets were noticed inside. Consequently, the jerrycan was carefully cut open from the side with the help of an iron blade for thorough inspection. From the container, a total of 154 strips, each containing 10 tablets, amounting to 1540 tablets were recovered, the aggregate weight of which was found to be 418.88 grams.

2.2. During interrogation, the accused Ramchandra disclosed that he had procured the said tablets from one Bhairaram Nath @ Sandeep. Thereafter, in compliance with the mandatory legal formalities, samples of the recovered contraband were drawn and the prescribed procedural requirements were duly fulfilled. On the

basis of the recovery, FIR No.55/2022 was registered at Police Station Sadar, Sri Ganganagar under Section 8/22 of the NDPS Act and investigation was set into motion.

2.3. Upon completion of investigation, the prosecution found sufficient material to proceed against accused Ramchandra for offences under Sections 8/22, 25 and 29 of the NDPS Act, and against co-accused Bhairaram Nath @ Sandeep for the offence under Section 8/22 read with Section 29 of the Act. Accordingly, a charge-sheet was submitted before the learned Special Judge, NDPS Cases, Sri Ganganagar.

2.4. After hearing the parties, the learned trial court framed charges against accused Ramchandra for offences under Sections 8/22 and 8/22 read with Section 29, and against accused Bhairaram Nath @ Sandeep under Section 8/22 read with Section 29 of the NDPS Act. The charges were read over and explained to the accused persons, who denied the same and claimed trial.

2.5. In order to substantiate its case, the prosecution examined eleven witnesses (PW-1 to PW-11) and produced documentary as well as material evidence exhibited as Exhibits P-1 to P-57, along with the seized articles. After closure of the prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein the incriminating circumstances appearing against them were put for their explanation.

2.6. Upon appreciation of the evidence and after hearing the arguments advanced by the parties, the learned trial court, by its judgment dated 21.11.2024, acquitted accused Ramchandra of the offences under Sections 8/22 and 8/22 read with Section 29

and co-accused Bhairaram Nath @ Sandeep of the offence under Section 8/22 read with Section 29 of the NDPS Act by extending to them the benefit of doubt.

3. I have heard the learned counsel appearing for the respective parties at length and have carefully perused the impugned judgment as well as the entire material available on record.

4. Upon a meticulous scrutiny of the record, it becomes manifest that the alleged search and seizure forming the substratum of the prosecution case was conducted by Sub-Inspector Babu Singh of Police Station Sadar, Sri Ganganagar. Significantly, from the evidence adduced during trial it nowhere transpires that the said officer was, at the relevant point of time, posted as the Station House Officer of the concerned police station or had been duly entrusted with the charge of the office of SHO by the competent authority. The prosecution has failed to place on record any oral testimony or documentary material demonstrating that the said officer was legally authorized or had been vested with the requisite statutory authority to exercise the powers of search and seizure under the relevant provisions of the NDPS Act 1985.

4.1. The position of law on this aspect is no longer res integra. It stands well settled through authoritative judicial pronouncements that the powers of search and seizure under the NDPS enactment must be exercised strictly in conformity with the statutory mandate, and any deviation therefrom goes to the very root of the prosecution case.

4.2. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in ***Roshnidevi v. State of Telangana, reported in 2026 LiveLaw (SC) 30***, wherein it has been emphatically held that the search and seizure contemplated under the statute must be conducted by an officer duly empowered or authorized in accordance with law, failing which the recovery itself becomes legally suspect. Similar view has been reiterated by this Court in ***State of Rajasthan Vs. Pawan Kumar, rendered in S.B. Criminal Appeal (SB) No.1346/2023 decided on 23.07.2025***, wherein the statutory requirement relating to authorization of the officer conducting the search was treated as mandatory in character. The relevant part of the judgment is being reproduced as under:-

6. This Court finds no illegality or perversity in the findings arrived at by the learned Special Judge. The prosecution's failure to establish compliance with the mandatory provisions under Section 42 of the NDPS Act, particularly the authority of the officer conducting the search, renders the entire recovery process doubtful and contrary to law. In this regard, the testimony of prosecution witness P.W.18, who was the alleged recovery officer, assumes critical significance. In his examination-in-chief, P.W.18 categorically stated that he was posted as a Sub-Inspector at Police Station Kotwali on 07.11.2011, but conspicuously omitted to state that he was the Station House Officer or held charge of the police station on the said date. During cross-examination, he acknowledged that the regular SHO, Shri Narendra Poonia, was posted at the police station on that day but was on medical leave. Although he further claimed that the charge was handed over to

him, no formal charge report, order of entrustment, or contemporaneous entry in the roznamcha was produced or exhibited before the trial Court to substantiate such a claim. This omission fatally undermines the prosecution's case, as the essential requirement of proving that the recovery officer was duly authorised under the Notification No. F.1(3)FD/EX/85-I dated 16.10.1986 remains unmet.

7. As per Standing Order No. 1 of 1986, only Sub-Inspectors who are officially designated as Station House Officers are competent to carry out search and seizure under the NDPS Act. Not all Sub-Inspectors are authorised to undertake such actions. Prima facie, there is merit in the argument that the seizure in this case was made by an unauthorised officer as there was no document on record showing that the officer concerned held charge of the concerned police station at the time the search and seizure was conducted. In view of this, when the seizure is effected by an officer not competent under the statutory provisions, the entire recovery stands vitiated, and consequently, no conviction can legally be sustained based on such recovery.

8. The NDPS Act is a statute comprising of stringent provisions which need to be followed in letter and in spirit and non-compliance of any stipulations specially the ones relating to the procedure followed during search, seizure and arrest, cannot be overlooked.

9. While enacting Section 42 of NDPS Act, the legislature put a complete ban on authorities beyond the ones mentioned in the Section to carry out the functions under the Act. The legislature has clearly empowered the persons mentioned therein and it has also been specified through the notification No.F.1(3)

FD/EX/85-I, dated 16-10-86 as to who are authorised to do so.

10. Chapter V of the NDPS Act specifically provides that only the officers mentioned and empowered therein can give an authorisation to a subordinate to arrest and search if such officer has reason to believe about the commission of an offence and after reducing the information, if any, into writing. As per Section 42, only officers mentioned therein and so empowered can make the arrest or search as provided if they have reason to believe from personal knowledge or information. The specific rank of the officer and 'reason to believe' are two important requirements that are needed to be complied with necessarily. Firstly, the Magistrate or the Officers mentioned therein are empowered and secondly, they must have reason to believe that an offence under Chapter IV has been committed or that such arrest or search was necessary for other purposes mentioned in the Act. So far as the first requirement is concerned, it can be seen that the legislature intended that only certain Magistrates and certain Officers of higher rank are empowered and can act to effect the arrest or search.

11. The notification No. F. 1(3) FD/EX/85-I, dated 16-10-86, published in Rajasthan Gazette Part IV-C (II) dated 16-10-86 on page 269 reads as:-

S.O. 115.- In exercise of the powers conferred by section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No 61 of 1985) the State Government hereby authorise all Inspectors of Police, and Sub-Inspectors of Police, posted as Station House Officers, to exercise the powers mentioned in Section 42 of the said Act with immediate effect:

Provided that, when power is exercised by Police Officer other than Police Inspector of the are a

concerned ~~such~~ officer shall immediately hand over the person arrested and articles seized to the concerned Police Inspectors or S.H.O. of the Police Station concerned.

12. Hon'ble the Supreme Court passed a landmark judgment in the case of **Roy V.D. Vs. State of Kerala** reported in **AIR 2001 SC 137** wherein, in a similar situation, it was observed as under:-

16. Now, it is plain that no officer other than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the Narcotic Drugs & Psychotropic Substances Act or make a complaint under Clause (d) of Sub-section (1) of Section 36A of the Narcotic Drugs & Psychotropic Substances Act. It follows that any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the Narcotic Drugs & Psychotropic Substances Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the Narcotic Drugs & Psychotropic Substances Act and use of such a material by the prosecution vitiates the trial.

18. It is well settled that the power under Section 482 of the Cr.P.C. has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to

abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 of the Cr. P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice.

13. In light of the judgments cited above, the notification passed by the State government in this regard as well as the provision contained in Section 42 of the NDPS Act, this Court is of the view that the non-compliance of mandatory provisions of the NDPS Act has to be dealt with a strict hand and it is imperative upon the courts to be cautious while adjudicating such matters where seizure is concerned under the NDPS Act as no accused should be able to walk scot-free for want of proper implementation and following of the procedure established by law.

14. In the present case, circumstances have arisen wherein the seizure itself stands vitiated on account of unlawful procedure adopted by the investigating agency. It is a settled position that a conviction cannot be sustained solely on the basis of a recovery which is tainted with illegality, and consequently, the Court is left with no other legally tenable option but to extend the benefit of acquittal to the accused.

15. In view of the above discussion and upon perusal of the entire record, this Court finds no merit in the appeal. The judgment dated 13.04.2023 passed by the learned Special Judge, NDPS Cases, Sri Ganganagar, does not warrant any interference.

16. Accordingly, the appeal instant is hereby dismissed. The judgment of acquittal passed by the

learned trial court is upheld as being just, legal and proper.

In the present case, the prosecution has not been able to demonstrate that the officer who allegedly effected the seizure was clothed with the lawful authority to do so. The absence of such foundational proof casts a serious shadow on the legality of the recovery itself and consequently undermines the prosecution case.

5. In light of the aforesaid legal position and upon an independent evaluation of the evidence on record, this Court finds no error, infirmity, perversity or illegality in the appreciation of evidence undertaken by the learned trial court. The learned court below has rightly extended the benefit of doubt to the accused-respondents.

6. Consequently, the appeal being devoid of merit deserves dismissal and the same is hereby dismissed. The impugned judgment of acquittal 21.11.2024 passed by the learned Special Judge, NDPS Act Cases, Sri Gananagar passed in Special Sessions Case No.33/2022 is hereby affirmed.

(FARJAND ALI),J