



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE FOURTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU**  
**CRIMINAL APPEAL NO: 346 OF 2010**

**Between:**

1. SANGULA RAM BABU, TIRUMALAYAPALEM [V], E.G.DIST. S/o. Late Sri Veerraju  
Cultivation, Hindu  
R/o. Tirumalayapalem (V),  
Gokavaram (M),  
E.G. District.

**...PETITIONER(S)**

**AND:**

1. THE STATE OF A.P., REP. BY P.P., HYDERABAD. Rep. by its Public Prosecutor  
High Court of Andhra Pradesh,  
Hyderabad.

**...RESPONDENTS**

**Counsel for the Petitioner(s): N SIVA REDDY**

**Counsel for the Respondents: PUBLIC PROSECUTOR (AP)**

**The Court made the following: ORDER**



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL No.346 OF 2010**

**Between:**

Sangula Rambabu, S/o late Veerraju,  
Hindu, aged 39 years, Cultivation,  
R/o.Tirumalayapalem Village,  
Gokavaram Mandal,  
East Godavari District. ... Appellant/Accused.

*Versus*

The State of Andhra Pradesh,  
Rep. by the Public Prosecutor,  
High Court of Andhra Pradesh. ... Respondent/Complainant.

DATE OF JUDGMENT PRONOUNCED: 14.06.2023

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the  
Fair copy of the judgment? Yes/No

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**A.V.RAVINDRA BABU, J**



**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

**+ CRIMINAL APPEAL No.346 OF 2010**

**% 14.06.2023**

**# Between:**

Sangula Rambabu, S/o.late Veerraju,  
Hindu, aged 39 years, Cultivation,  
R/o Tirumalayapalem Village,  
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East Godavari District. ... Appellant/Accused.

*Versus*

The State of Andhra Pradesh,  
Rep. by the Public Prosecutor,  
High Court of Andhra Pradesh. ... Respondent/Complainant.

**! Counsel for the Appellant** : Sri N. Shiva Reddy.

**^ Counsel for the Respondent** : Public Prosecutor

**< Gist:**

**> Head Note:**

**? Cases referred:**

2001 (2) ALD (Cr.) 928 (AP)  
(1999) 6 SCC 172  
2004 (14) ILD 271  
AIR 2004 Supreme Court 2491  
2014 (1) ALD (Cr.) 909 (SC)  
2003 (11) ILD 491 SC

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL APPEAL NO.346 OF 2010****JUDGMENT:-**

Challenging the judgment, dated 23.02.2010 in NDPS Sessions Case No.4 of 2008, on the file of Special Sessions Judge for Trial of the Cases under the Narcotic Drugs and Psychotropic Substance Act, 1985-cum-I Additional Sessions Judge, East Godavari District, Rajahmundry (hereinafter will be referred to as "Special Judge"), the unsuccessful accused therein, filed the present Criminal Appeal. The learned Special Judge found the accused guilty of the charge under Section 8(c) r/w Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substance Act, 1985 ("NDPS Act" for short), convicted him under Section 235(2) of the Code of Criminal Procedure Code ("Cr.P.C." for short) and after questioning him about the quantum of sentence, sentenced him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.25,000/-, in default to suffer simple imprisonment for six months.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court for the sake of convenience.



3) The State, represented by the Inspector of Police, Rampachodavaram, filed a charge sheet in Crime No.180 of 2007 of Rampachodavaram Police Station, alleging in substance as follows:

(i) The accused is resident of Tirumalayapalem Village of Gokavaram Mandal. He has no respect towards Law and Order and used to indulge in antisocial activities.

(ii) L.W.1-V. Srinivasa Rao and L.W.2-M. Murali Krishna are the Tahsildar of Rampachodavaram and Village Revenue Officer of Peda Geddada Village respectively.

(iii) On 27.11.2007 on receipt of credible information, L.W.8-M. Veera Reddy, Inspector of Police, Rampachodavaram Police Station, collected his staff and L.W.1 and L.W.2 and proceeded to the outskirts of Peda Geddada Village of Rampachodavaram Mandal. At about 11-30 a.m., they found the accused, who tried to escape from the scene by leaving the gunny bag on noticing the arrival of the police. Then, the Inspector of Police along with the staff surrounded him, caught hold of him and interrogated him, who revealed that he is in possession of 10 Kgs. of Ganja in gunny bag having purchased it from one person at Orissa State and he was transporting the same to Tirumalayapalem village of Gokavaram Mandal. The Inspector of Police intimated to the accused about the presence



of L.W.1, who is the Gazetted Officer, and searched the gunny bag. Accordingly, evidencing the seizure, a mahazarnama was drafted. Contraband was seized after following the prescribed procedure. L.W.7-Sub Inspector of Police registered the mahazarnama as a case in Crime No.180 of 2007 under Section 20(b)(i) of NDPS Act at 1-00 p.m., on 27.11.2007. The Inspector of Police during investigation, examined L.W.3-N. Venkata Rao, Head Constable, L.W.4-A.V.V. Satanarayana, Police Constable, L.W.5-S. Appa Rao, Police Constable and L.W.6-Andaluri Venkateswara Rao, who participated in the raid. The seized sample i.e., Ganja packet was forwarded to the Chemical Examiner of Prohibition & Excise, Regional Prohibition and Excise Laboratory, Kakinada, for examination. The accused also involved in another case of Rampachodavaram Police Station and involved in Gokavaram and Korukonda Police Stations. The Chemical Examiner examined the sample and found that the sample is of Ganja. Hence, the charge sheet.

4) The learned Special Judge took cognizance of the case under the above provisions of law and after appearance of the accused complied Section 207 of Cr.P.C. The learned Special Judge by following the procedure under Section 228 of Cr.P.C., framed charge under Section 8(c) r/w 20(b)(ii)(B) of N.D.P.S Act



against the accused, explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

5) To bring home the guilt against the accused, the prosecution, during the course of trial, examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.6 and M.O.1. After closure of the evidence of prosecution, accused was examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which he denied the same and he did not examine any defence witnesses.

6) The learned Special Judge, on hearing both sides and on considering the oral as well as documentary evidence, found the accused guilty of the charge and accordingly, convicted him under Section 235(2) of Cr.P.C. and after questioning him about the quantum of sentence, sentenced him as above. Aggrieved by the conviction and sentence, the unsuccessful accused, filed the present Criminal Appeal, challenging the judgment of the learned Special Judge.

7) Now, in deciding this Criminal Appeal, the points for determination are as follows:

(1) Whether the prosecution before the Court below proved that the accused was found in possession of 10 Kgs. of Ganja on 27.11.2007 at about 11-30 a.m., on the outskirts of Peda Geddada Village of Rampachodavaram Mandal in contravention of the provisions of NDPS Act?



(2) Whether the prosecution before the Court below proved the charge against the accused beyond reasonable doubt?

(3) Whether there are any grounds to interfere with the judgment of the learned Special Judge?

**POINT NOS.1 TO 3:-**

8) Sri N. Shiva Reddy, learned counsel appearing for the appellant, would contend that the mandatory provisions under Sections 43, 50 and 57 of the NDPS Act were not complied with by P.W.4, the investigating officer and there were serious infirmities in the case of the prosecution for the reason that the raid party did not obtain the signature of the accused on M.O.1 sample. There was discrepancy with regard to the signature of P.W.4 on Ex.P.3 notice and Ex.P.1 which cast shadow of doubts about the bonafidies in the case of the prosecution. The name of the accused as alleged in Ex.P.1 was not at all correct. There was no proper compliance of Section 50 of the NDPS Act and accused was never informed that P.W.1 was a Gazetted Officer. The Court below when the accused raised about non-compliance of the above provisions of law, found favour with the case of the prosecution with untenable reasons and the penal provisions under the NDPS Act are very





serious and non-compliance of the same would entail benefit of doubt in favour of the accused.

9) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that there was no personal search in terms of Section 50 of the NDPS Act. However, P.W.4 secured the presence of P.W.1, a Gazetted Officer, and there was compliance of Section 50 of the NDPS Act. Even the investigating officer under Ex.P.4 intimated the seizure in detail to the superior officers, as such, there was compliance of Section 57 of the NDPS Act. He would further submit that the Court below found favour with the case of the prosecution regarding the compliance of the mandatory provisions of the NDPS Act. The Court below negated the contention of the accused that his name as mentioned in Ex.P.1 was incorrect. The learned Special Judge with sound reasons found favour with the case of the prosecution, as such, the Criminal Appeal is liable to be dismissed.

10) P.W.1 before the Court below was the then Tahsildar in RDO Office, Kakinada, who worked as Tahsildar, Rampachodavaram from 03.06.2007 to 28.08.2009. P.W.2 was the Village Revenue Officer, who claimed to have accompanied the raid party and witnessed the events. P.W.3 was the then Sub-Inspector of Police, Rampachodavaram, who was the



member of the raid party. P.W.4 was the then Inspector of Police, Rampachodavaram, who claimed to have organized the raid.

11) The substance of the evidence of P.W.1 is that previously he worked as Tahsildar, Rampachodavaram from 03.06.2007 to 28.08.2009. L.W.2-Murali Krishna was Village Revenue Officer of Peda Geddada Village by then. On 27.11.2007 at 11-00 a.m., the Inspector of Police, Rampachodavaram, telephoned to him and requested him to come to the police station. Then, he along with L.W.2, Sub-Inspector of Police and C.I. of Police and their staff went to a water tank in the outskirts of Peda Geddada village. They found a person along with a bag and on noticing the police, he tried to escape. Then, police surrounded him, caught hold of him and interrogated him about the contents of the bag. Then, the said person disclosed his identity as Sangula Rambabu (accused), resident of Tirumalayapalem. C.I. of Police introduced him to the accused and asked whether he has any objection to be searched in his presence. The accused gave consent for the search. A notice was served to that effect on the accused. He further deposed that in his presence the bag was opened and there was Ganja. The accused confessed that he brought the Ganja. In fact, a weighing man also accompanied to them to the place and



he verified the Ganja in the bag, measured the same and found it as 10 Kgs. Out of which, 200 grams of Ganja was lifted as sample and it was kept in a packet. A slip containing the signatures of him, L.W.2, Sub-Inspector of Police and Inspector of Police were affixed to the said sample packet. M.O.1 is the sample packet. A mahazar was drafted at the place of offence which is Ex.P.1. In Ex.P.1 he, L.W.2 and C.I. of Police put their signatures and accused also subscribed his signature in Ex.P.1. (Witness identified the accused in the open Court).

12) The evidence of P.W.2, Village Revenue Officer, is that on 27.11.2007 at the instructions of Inspector of Police to P.W.1, he along with P.W.1 went to the police station, Rampachodavaram. He, P.W.1, S.I. of Police and C.I. of Police and their staff went to Peda Geddada outskirts at 10-30 a.m. When they reached near Satyasai Baba Water Tank, one person who was found with bag, tried to escape and the C.I. of Police arrested him and he disclosed his name as Sangula Rambabu of Tirumalayapalem village. The Inspector of Police informed him that he intended to search him in the presence of the Tahsildar of Rampachodavaram. Accordingly, Inspector of Police verified the bag and found Ganja. The accused gave his confession. The weighing man weighed the Ganja in the bag which comes to 10 Kgs. Out of which, 200 grams of Ganja was lifted as a sample.



Identity slip containing his signature, signature of P.W.1 and Inspector of Police was affixed. (Witness identified M.O.1). He drafted mahazarnama from 11-30 a.m. to 12-30 p.m. which is Ex.P.1. In Ex.P.1, he, P.W.1 and Inspector of Police and Sangula Rambabu put their signatures. (Witness identified the accused).

13) Coming to the evidence of P.W.3, he spoken the facts that on 27.11.2007 at 11-30 a.m., he accompanied the Inspector of Police, Rampachodavaram along with P.W.1 and P.W.2 and other staff. They all went to the outskirts of Peda Geddada Village at Satyasai Water Tank and found a person who tried to abscond on seeing the police with a gunny bag. They caught hold of him. He revealed his identity as Sangula Rambabu on interrogation by the C.I. of Police and that bag contained Ganja. After getting no objection, in the presence of P.W.1, the gunny bag was searched and it was found with Ganja. It was weighed by L.W.6-Angaluri Venkateswara Rao and it was measured as 10 Kgs, out of which, 200 grams of Ganja was lifted as sample. (Witness identified the accused and M.O.1 sample packet). After returning to the police station, at the instructions of C.I. of Police, he registered the mahazarnama as a case in Crime No.180 of 2007 and Ex.P.2 is F.I.R.

14) The evidence of P.W.4 is similar as that of the evidence of P.W.3. He deposed about the raid conducted by him



on 27.11.2007 in the presence of P.W.1 to P.W.3 at Satya Sai Water Tank, located at Peda Geddada Village. They found a person who tried to abscond. They caught hold of him, who revealed the identity as that of the accused on interrogation and that he is in possession of Ganja in the bag. He got searched the same in the presence of P.W.1, Gazetted Officer, after obtaining consent with the accused and found 10 Kgs. of Ganja. Out of which, 200 grams of Ganja was lifted as sample, which was affixed with identity slips. He arrested the accused at 11-30 a.m. under Ex.P.1. He endorsed the mahazar to S.I. of Police to register F.I.R. He returned to the police station along with the accused and seized material. He received copy of F.I.R. for further investigation. During the course of investigation, he examined P.W.3, N. Venkata Rao, A.V.V. Satyanarayana, S. Appa Rao and A. Venakteswara Rao (L.W.6). Thereafter, he sent the accused for remand. He sent a detailed report under Ex.P.4 after raid. He forwarded the sample to the Chemical Examiner under the cover of letter of advice under Ex.P.5. After receipt of chemical analysis report under Ex.P.6, he filed the charge sheet. Ex.P.6 reveals that the sample is of Ganja. (He identified the accused).

15) In the light of the contentions advanced by the learned counsel for the appellant, now it becomes necessary to



deal with as to whether compliance of Section 50 of the NDPS Act is necessary and if so, it is complied by the investigating officer. For better appreciation, it is pertinent to refer here Section 50 of the NDPS Act. It runs as follows:

50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

[(5) When an officer duly authorised under section 42 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 substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]



16) A close perusal of Section 50 of the Act means that if the arrested person requires that he should be searched before a Gazetted Officer or a Magistrate, the empowering officer shall take him to the Gazetted Officer or Magistrate. The law is well settled with regard to Section 50 of the Act. It has no application when there is no personal search of the accused. At this juncture, this Court would like to refer here the well established legal precedents under Section 50 of the Act.

17) In **Bodaband Sundar Singh vs. State of A.P.**<sup>1</sup>, there was a case where the investigating agency found contraband in possession of a box and zip bag of the accused. The trial court recorded conviction against the accused. Then, the matter went in appeal before the High Court of A.P., at Hyderabad. The High Court of A.P. referred various decisions and held that Section 50 of the N.D.P.S. Act would come into play only in the case of a search of a person as distinguished from search of any place etc. The High Court of A.P. in arriving at such a conclusion relied on a decision of the Hon'ble Supreme Court in **Kaleme Thumba vs. State of Maharashtra** and further the Constitutional Bench decision of the Hon'ble Supreme Court in **State of Punjab vs. Baladev Singh**<sup>2</sup>. The High Court of A.P. by following the above said decisions held that the search

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<sup>1</sup> 2001(2) ALD (CrI.) 928 (AP)

<sup>2</sup> (1999) 6 SCC 172



of a person indicates search of the body of the person but not other belongings like hand bags, suitcases, etc., as such when there is search of a person, then only the procedure contemplated under Section 50 of the Act has to be resorted to.

18) In **Saikou Jabbi vs. State of Maharashtra in Criminal Appeal No.103 of 2003<sup>3</sup>**, the Hon'ble Supreme Court dealing with Section 50 of the Act and also by relying upon the earlier decisions in *Kaleme Thumba vs. State of Maharashtra and Baladev Singh (2 supra)*, held that language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises and is not applicable to other types of search.

19) The Hon'ble Supreme Court in **State of Haryana v. Jarnail Singh and others<sup>4</sup>** also by following earlier decisions reiterated that Section 50 of the N.D.P.S. Act did not apply when the search of a Tanker was conducted because it was not a personal search.

20) Apart from this, the Hon'ble Supreme Court in **2014(1) ALD (Cri.) 909 (SC)** had an occasion to refer the Constitutional Bench decision in *State of Punjab vs. Baladev Singh (2 supra)* equivalent to *AIR 49 SC 2278*. The Hon'ble

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<sup>3</sup> 2004 (14) ILD 271

<sup>4</sup> AIR 2004 Supreme Court 2491





Supreme Court extracted the observations in *Baladevi Singh's case (2 supra)* as follows:

(1) That when an empowered officer or a duly authorized officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 being taken to the nearest Gazetted Officer or to the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a Gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazette officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazette officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

21) Therefore, it is very clear that non-following of Section 50 of the NDPS Act may not vitiate the trial but would render the recovery of illicit article suspect and vitiate the conviction and sentence. Coming to the case on hand, Ganja is



said to be recovered from the gunny bag of the accused, as such, there is no violation of Section 50 of the Act.

22) When non-compliance of Section 50 of the Act was raised by the accused before the Court below by denying that Ex.P.2, the so-called notice under Section 50 of the NDPS Act, did not reveal that P.W.1 was a Gazetted Officer or not, the Court below found favour with the case of the prosecution. The findings of the learned Special Judge in this regard were that according to P.W.1, there was no whisper in Ex.P.1 that the Tahsildar, Rampachodavaram is a Gazetted Officer, but, P.W.1 clarified that the accused know that fact. The Court below found favour with the case of the prosecution by holding that the Tahsildar is a Gazetted Officer and Executive Magistrate of Mandal, as such, there was proper compliance of Section 50 of the NDPS Act. As this Court already pointed out, in the light of settled legal position as above, absolutely, whenever there was a personal search, only compliance of Section 50 of the NDPS Act would arise. There is no dispute that there was no personal search of the accused. On the other hand, the case of the prosecution was that the accused was in possession of a gunny bag and gunny bag was searched. Hence, absolutely, this Court is of the considered view that the compliance of Section 50 of the NDPS Act, in the light of the facts and circumstances as



referred to above, was not at all necessary and the investigating officer was not at all supposed to comply it. However, he claimed to have secured the presence of P.W.1 at the time of search. Therefore, the contention of the appellant that the search was vitiated on account of non-compliance of Section 50 of the NDPS Act is not tenable.

23) Coming to the contention of the learned counsel for the appellant that there was no compliance of Section 43 of the NDPS Act, this Court would like to make it clear that there is a lot of difference between Section 42 as well as Section 43 of the NDPS Act. It is not the contention of the appellant that there was no compliance of Section 43 of the NDPS Act. In my considered view, compliance of Section 42 of the Act is not necessary in this case. Section 42 of the Act runs as follows:

2[42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(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 para-military 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;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

1[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made there under, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief



under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]

24) A close perusal of Section 42 of the Act means that if the empowered officer has any information out of his personal knowledge or information given by any person and taken down in writing about the storage of any narcotic drug or psychotropic substance in any house, enclosed place or in any conveyance, he may between sunrise and sunset enter into and search any building, conveyance or place and seize such contraband. The proviso of Section 42 reveals that such search can be conducted between sunset and sunrise. When Section 42(1) contemplates search during day time, the proviso contemplates search during night time. According to Section 42(2) of the Act where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within 72 hours send a copy thereof to his immediate official superior.

25) Absolutely, it is not the case of the prosecution that the investigating officer received any information that Ganja was stored in any building or in any conveyance. So, absolutely, the case on hand does not attract the compliance of Section 42 of the NDPS Act.



26) Now, turning to Section 43 of the NDPS Act, it runs as follows:

1[43. Power of seizure and arrest in public place.—Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. Explanation.—For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

27) A close perusal of Sections 42 and 43 of the N.D.P.S Act, discloses that they are distinct and separate. Section 42 of the Act prescribed a specific procedure if there was specific information about the fact that drugs or psychotropic substances or controlled substances in respect of which an offence under the Act has been committed is kept or concealed in any building, conveyance or enclosed place. In such circumstances, a search is contemplated between sunrise and sunset subject to the



procedure therein. It provides further search between sunset and sunrise by recording the grounds of plea. Coming to Section 43 of the Act, it contemplates power of seizure and arrest in public place by any officer contemplated in Section 42. Therefore, Section 43 refers to the power of seizure and arrest in public place by the officers mentioned in Section 42. Nowhere it is provided in Section 43 of the Act that the procedure contemplated under Section 42 has to be followed.

28) Apart from this, the Hon'ble Supreme Court in *Jarnail Singh's case (supra)* clearly held that "Section 42 and 43 contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, if a public conveyance is searched in a public place, the Officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise. In the instant case, the tanker was moving on the public highway when it was stopped and searched. Section 43, therefore, clearly applied to the facts of



the case. Thus there was no requirement of the Officer conducting the search to record the grounds of his belief as contemplated by the proviso to Section 42. More so, when Superintendent of Police was also a member of the searching party.”

29) It is to be noticed that in view of the provisions of Section 43 of the Act as well as the judgment of the Hon’ble Supreme Court in *Jarnail Singh’s case (4 supra)*, the procedure under Section 42 of the NDPS Act has no application whenever search is effected in a public place.

30) Absolutely, the contention of the appellant that Section 43 of the NDPS Act was not complied deserves no merits. The appellant failed before the Court below that how Section 43 of the Act which was only relating to search in an open place is violated. Therefore, I do not find any reason to find favour with the contention of the appellant in this regard.

31) Turning to Section 57 of the NDPS Act, it runs as follows:

**Section 57 in The Narcotic Drugs and Psychotropic Substances Act, 1985**

57. Report of arrest and seizure.—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.





32) As seen from the evidence of P.W.1 coupled with Ex.P.4, he duly intimated to the superior officer on the date of seizure itself about the seizure and arrest of the accused. Even the contention of the appellant that Section 57 of the Act was not complied has no force at all.

33) In the light of the above, this Court is of the considered view that the appellant failed to probabalize his contention that investigating officer did not comply the mandatory provisions under the NDPS Act.

34) Now, I proceed to deal with as to whether the evidence adduced by the prosecution before the Court below regarding the manner in which they claimed to have recovered the Ganja is convincing or not.

35) As seen from the evidence of P.W.1 during cross examination, the accused elicited a fact that M.O.1 did not contain his signature. As seen from Ex.P.1, it contained the purported signature of the accused. It is to be noticed that there was consistent evidence of P.W.1, P.W.2, P.W.3 and P.W.4 that insofar as sample under M.O.1 is concerned, the signature of P.W.1 to P.W.4 alone were obtained. Simply because the investigating officer did not obtain the signature of the accused on M.O.1 it is not going to affect the case of the prosecution.



The accused had no probable say how his signature was there on Ex.P.1. The accused got elicited an answer from P.W.1 that the accused involved in another case in which he gave evidence, but, he did not remember the case number or crime number. The obvious intention of the accused while eliciting the answer is appears to be that P.W.1 was a stock witness. It is to be noticed that P.W.1 was a Gazetted Officer and the investigating officer under a misconception that he has to comply Section 50 of the NDPS Act claimed to have secured the presence of P.W.1. May be it is a fact that in the presence of P.W.1 previously another crime was registered against the accused in which P.W.1 gave evidence. It is to be noticed that P.W.1 being a Gazetted Officer who was working in the revenue department has an obligation to assist the police in view of Section 47 of the NDPS Act. Even otherwise, he was bound to assist the police whenever he was requested by the police to detect the offence under NDPS Act. Therefore, there is no reason to disbelieve the evidence of P.W.1.

36) Coming to the evidence of P.W.2, nothing is elicited in his cross examination to disbelieve his testimony. P.W.1 to P.W.3 during cross examination denied the defence theory.

37) The accused raised a contention before the Court below that his name is Sangula Ramakrishna but not Sangula



Rambabu and he filed Ration Card at the time of Section 313 of Cr.P.C. examination before the Court below. It is to be noticed that according to the contents of Ex.P.1 which contained the signature of the accused, he disclosed his identity as Sangula Rambabu. The evidence of P.W.1 to P.W.3 is consistent that the name of the accused was elicited upon the information given by him when he was interrogated. As seen from Ex.P.1, the signature of the accused is Sangula Rambabu. He did not sign it as Sangula Ramakrishna. When the accused received copy of Ex.P.1, he kept quiet. Even when a charge under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act was also framed against the accused, he put his signature as Sangula Rambabu. He put his signature in Section 313 of Cr.P.C. examination questionnaire as Sangula Rambabu. If really his name was Sangula Rambabu, he would have agitated about the same right from Ex.P.1 till the stage of Section 313 of Cr.P.C. examination. Hence, I do not find any merit in the contention advanced on behalf of the appellant. Simple because there was no signature on M.O.1, the case of the prosecution cannot be disbelieved. The accused did not explain how his signature was there on Ex.P.1. P.W.1 to P.W.4 during cross examination did not give any answers probabalizing the defence theory. They withstood the marathon



cross examination. The accused has no probable say so as to explain the manner in which he came into custody of the police.

38) Now, it is relevant to refer herein certain presumptions as contemplated under Section 35 of the NDPS Act. According to Section 35 of the Act, 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 defence 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. The explanation of the above shows that 'culpable mental state' includes intention, motive knowledge of a fact and belief in, or reason to believe a fact. The Hon'ble Supreme Court in **2003 (11) ILD 491 SC** held that once possession is established, then the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge.

39) According to Section 54 of the NDPS Act, it contemplates certain presumptions. According to the said section in trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused committed the offence under this Act in respect of any narcotic drug or



psychotropic substance or controlled substance for the possession of which he fails to account satisfactorily.

40) It is no doubt true that the presumption under Section 54 of the NDPS Act and the presumption under Section 35 would arise after the prosecution discharged its burden to prove the recovery of the contraband from the accused. In my considered view, the prosecution discharged its burden about the recovery of contraband from the possession of the accused. In such circumstances, it is for the accused to prove the contrary. The accused had no semblance of say much less probable say to prove contrary.

41) Having regard to the above, this Court is of the considered view that the prosecution before the Court below cogently established about the recovery of 10 Kgs. of Ganja from the possession of the accused. A perusal of Ex.P.6-R.F.S.L. report runs that the sample that was tested by the Laboratory was of Ganja. The prosecution established the link between M.O.1 with that of the Ganja which was found in the gunny bag of the accused. The learned Special Judge on factual aspects rightly appreciated the evidence on record and rightly found the accused guilty.

42) Having regard to the above, I am of the considered view that absolutely, there are no grounds to interfere with the



judgment of the learned Special Judge. The prosecution before the Court below categorically proved the charge against the accused beyond reasonable doubt. The accused failed to probabalize any contention how he can justify his action in possessing 10 Kgs. of Ganja. So, the act of the accused is nothing but contravening the provisions under the NDPS Act. Hence, I do not find any reason to interfere with the judgment of the learned Special Judge.

43) In the result, the Criminal Appeal is dismissed, as such, the judgment of the Special Sessions Judge for Trial of the Cases under the Narcotic Drugs and Psychotropic Substance Act, 1985-cum-I Additional Sessions Judge, East Godavari District, Rajahmundry in NDPS S.C.No.4 of 2008, dated 23.02.2010 shall stand confirmed.

44) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the judgment of this Court to the trial Court on or before 21.06.2023 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant and to report compliance to this Court.

45) The accused is directed to surrender before the Court below on or before 23.06.2023 and on such surrender the learned Special Judge shall take necessary steps to entrust the



conviction warrant. If the accused fails to surrender on or before 23.06.2023, the learned Special Judge shall issue Non Bailable Warrant and shall take necessary steps to carry out the sentence imposed against the accused.

46) The Registry is directed to forward the record along with copy of the judgment to the Court below as above without fail.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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**JUSTICE A.V. RAVINDRA BABU**

Dt. 14.06.2023.

PGR



**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU**

**45**

**Note:-**

Registry to circulate a copy of this judgment to the Court below on or before 21.06.2023.

**CRL. APPEAL NO.346 OF 2010**

**Date: 14.06.2023**

PGR