GAHC030002282025

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

AIZAWL BENCH

CRL.A.(J) No. 15/2025

1. **SHRI LALZARZOVA @ ZARZOVA**
   S/o Tlangkhuma
   R/o Mauchar, Aizawl District

……*Appellant*

-Versus-

1. **THE STATE OF MIZORAM**

……*Respondent*

For the Appellant(s) : Mr. F. Lalengliana, Sr. Adv.
Mr. C. Lalsangpuia, Adv.

……Advocate(s)

For the Respondent(s) : Mrs. Linda L. Fambawl, P.P.

……Advocate(s)

BEFORE
HON'BLE MR. JUSTICE ANJAN MONI KALITA

Date(s) of Hearing	:-	18.06.2026
Date on which judgment is reserved	:-	18.06.2026
Date of pronouncement of judgment	:-	25.06.2026
Whether the pronouncement is of the operative part of the judgment?	:-	N/A
Whether the full judgment has been pronounced?	:-	Yes

JUDGMENT & ORDER (CAV)

(A.M. Kalita, J)

Heard Mr. F. Lalengliana, learned Senior Counsel, assisted by Mr. C. Lalsangpuia, learned counsel appearing as the Amicus Curiae for the appellant.

Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent.

2. The instant Criminal Appeal (J) has been filed by Shri. Lalzarzova alias Zarzova, against the Judgment & Order dated 09.04.2024, passed by the learned First Track Court, Kolasib District-Kolasib, in Sessions Case No. 15/2021 (Kolasib Excise Case No. 30/2021), whereby, the appellant has been convicted and directed to undergo rigorous imprisonment for a period of ten (10) years and to pay a fine of Rupees 1,000,00/- (One Lakh), in default of payment of fine, to undergo another rigorous imprisonment for a period of one (1) year.

3. The facts giving rise to the prosecution story, in brief, is that on 23.02.2021, at around 4:30 p.m., Mr. F. Lalnuntuanga, Sub-Inspector of Excise and Narcotics (Anti-Narcotics Squad), arrested two persons, namely: - (1) Mr. Zarzova, S/o. Tlangkhuma and (2) Mr. Lalduhawma, S/o Thangmawia, both residents of Mauchar village, District Aizawl, Mizoram, consequent upon recovery/seizure of 324 grams of heroin from their possession. The arrest and seizure is supposedly pursuant to receipt of certain secret information. The place of occurrence was the National Highway of Serkhan-Bagha road, 8 km away from Bukpui (Ralbawm Ram), which falls within the territorial district of Kolasib. On such seizure of the contraband substances, Kolasib Excise and Narcotics department registered a case against the two accused persons, under section 21(c) NDPS Act, for violation of section 8(c) of

the same Act, vide Kolasib Excise and Narcotics Case No. EX-KLB/20/2021 dated 20.03.2021.

4. Sub-Inspector, Mr. Lalbiakhluna Ralte of Kolasib Excise and Narcotics Department took up the investigation of the case and during his course of investigation, he examined the Seizure Officer and other witnesses and recorded their respective statements. He produced the accused and the seized substances before the court of learned Judicial Magistrate First Class (JMFC), Kolasib and drew representative samples in the court and sent them to Forensic Science Laboratory, Aizawl, for chemical analysis. He produced the two accused persons before the Medical Officer, District Hospital, Kolasib, as mandated by Section 53 Cr.P.C., and COVID-19 screening was also done to make sure that they were not infected with COVID-19 virus. He received the FSL report about the examination of the samples confirming that the seized substances were found to be heroin with purity of 77% w/w at the time of examination. After finding strong evidences of violation of Section 8(c) of the NDPS Act, the I.O. submitted the complaint sheets/ charge-sheets against the accused persons under Section 21(c) of the NDPS Act.

5. On 08.04.2022, the learned Judge of Special Fast Tract Court, Kolasib, framed formal charges against the two aforesaid accused persons under Section 21(c) of the NDPS Act. The charges were read over and explained to the accused persons and to which both pleaded not guilty and claimed for trial. The trial court framed the following points for determination: -

(i) Whether the Excise & Narcotics Officer seized contraband substances from the possession of the two accused on the occasion complained of?

(ii) Whether the seized substances were heroin?

(iii) Whether the Excise officers duly complied with the mandatory provisions of laws?

(iv) Whether possession in the case is conscious possession or not?

(v) Whether the accused are liable to be convicted and sentenced under the charged section of law?

6. After completion of the trial and upon hearing the counsel for the parties, the learned Fast Track Court, as far as point no. (i) for determination is concerned, has concluded that the Excise and Narcotics Officer seized the contraband substances from the accused no. 1, namely, Lalzarzova, while nothing was recovered from the possession of the accused no. 2, Lalduhawma. As far as point no. (ii) for determination is concerned, the learned Fast Track Court came to the conclusion that there was nothing in evidence to rebut the evidence of FSL as regards its report and on the basis of the evidence adduced by the FSL expert, it was concluded that the seized substances were heroin. As for Point no. (iii) for determination, the learned Fast Track Court found it safe to conclude that the excise officers duly followed the mandatory provisions of laws that attracted in the present case and therefore, came to a conclusion that there was no violation of the mandatory provisions of law by the excise officers. As for Point no. (iv) for determination, the learned Fast Track Court came to the conclusion that the defense failed to establish unconscious possession while the prosecution has proved possession against the accused, namely, Lalzarzova. Therefore, the learned Fast Track Court came to the conclusion that the accused Lalzarzova was in conscious possession of the heroin. As far as point no. (v) for determination is

concerned, the learned Fast Track Court has come to a conclusion that the prosecution has proved the case beyond reasonable doubt about the seizure of heroin from the possession of the accused Lalzarzova, its illegal possession and conscious possession as well by him. Therefore, the learned Fast Track Court does not have any other option but to proceed for the conviction of the accused no. 1, i.e., Mr. Lalzarzova.

7. In the aforesaid terms, in result, the learned Fast Track Court convicted the accused Lalzarzova, under Section 21(c) of NDPS Act for violating Section 8(c) of the Act. But, did not find sufficient materials against the accused No. 2, i.e., Mr. Lalduhawma for his conviction and therefore, he was acquitted from the charges.

8. Mr. F. Lalengliana, the learned Senior Counsel appearing as Amicus Curiae, submits that there are material discrepancies in the evidence of PW-1 and PW-2, who were the seizure witnesses in the instant case. He submits that PW-1 and PW-2 could not answer as to whom the seized substances belonged. Therefore, he submits that since there is a statement that the seized substances did not belong to the accused persons whereas, at the same time, it was stated that the seized substances were seized from the accused persons, the both statement cannot stand together and therefore, the same being contradictory cannot be relied upon.

9. The learned Senior Counsel submits that the seizing officer conducted the search on the two accused persons without following the provisions of Section 50 of NDPS Act, especially the accused persons were not informed about their rights of choosing to be searched in front of a Magistrate or any Gazetted Officer. In view of such violation of Section 50 of the NDPS Act, the learned Senior Counsel submits that the procedure which is mandatorily required to be followed in search of the accused persons and further, due to non-

intimation of their valuable right of being searched in front of a Magistrate or any Gazetted Officer, the same being violated, the procedure adopted by the seizing officer cannot be said to be correct and since there is a violation, the same vitiates the whole process and thereby, making the prosecution story unreliable and doubtful. He submits that the procedural illegality in conducting search and seizure is very vital in cases under NDPS Act and if the correct procedure is not followed, the evidence collected thereby cannot be said to be admissible and therefore, the whole prosecution fails in that regard alone. In support of his submission, the learned Senior Counsel has referred to the case of ***Khet Singh Vs. Union of India***, reported in ***(2002) 4 SCC 380***.

10. The learned Senior Counsel further submits that though there are provisions under Sections 35 and 54 of the NDPS Act with regard to the culpable mental state on the part of the accused persons, such presumptions would operate in the trial of the accused only in the event of circumstances contained therein are fully satisfied and an initial burden always exists upon the prosecution. He submits that the standard of proof required proving the guilt of the accused is very high in the cases under NDPS Act due to the stringent provisions of the Act. He submits that in the instant case, there are contradictions in the statements of PW-3 and PW-4 with regard to the exact place of recovery of the heroin. He submits that this contradiction in evidence creates reasonable doubts in the credibility of their evidence and hence, their evidence cannot be said to be reliable.

11. The learned Senior Counsel submits that the PW-3, in his *cross-examination*, stated that the seized substances were not seized from the physical possession of the accused persons and that the same were seized from a vehicle (Renault Kwid). However, in his *cross-*

examination of PW-4, he deposed that the seized substances were not seized from inside the vehicle. Therefore, there are contradictions in the prosecution's story itself as two vital PWs, one being the seizure officer, and other being the I.O., has contradicted about the place of seizure and/or from whom the seized substances were seized. He submits that in an NDPS matter, the place or from whose possession the seized substances are recovered, is a very vital piece of evidence and any doubt or discrepancy in the evidence, the same evidence shall be termed doubtful and cannot be relied on and put against the accused person. Therefore, he submits that since there are contradictions as far as the place of seizure and from whom actually the seized substances were recovered, being of doubtful nature, the same evidence cannot be relied on. In support of his submission, the learned Senior Counsel has referred to the case of ***Noor Aga Vs State of Punjab & Another***, reported in ***2010(3) SCC (CRI) 748***.

12. On the other hand, Mrs. Linda L. Fambawl, the learned Public Prosecutor, submits that there is no infirmity in the Judgment & Order dated 09.04.2024, passed by the learned Fast Track Court, Kolasib. She submits that though there are certain negligible and minor discrepancies in the statements of PW-3 and PW-4, however, the same is not fatal in the instant case. She submits that there is no dispute that the narcotic substances were seized from the accused no. 1, i.e., the appellant, in the instant case. She submits that the prosecution has proved its case beyond any reasonable doubt and in the instant case, there is no violation of any procedure that is required to be adopted in search and seizure, as well as in other aspects of a case related to NDPS Act. Therefore, she submits that since there is no infirmity and the learned counsel appearing for the appellant, could not specifically point out any specific infirmity in the instant case, the instant appeal

should be dismissed by upholding the Judgment & Order dated 09.04.2024, passed by the learned Fast Track Court, Kolasib.

13. This Court has heard the submissions made by the learned counsel appearing for the respective parties.

14. This Court has also perused the materials brought in Paper-book as well as the TCR that has been received from the Trial Court.

15. It is seen from the records as well as from the statements of PW-3, namely, Mr. F. Lalnuntluanga, S.I., E & N Department who deposed that he received a secret information on 19.03.2021 from 46th Assam Rifle about trafficking of large quantities of contraband substances within Kolasib area. Accordingly, he put the said information in writing first and thereafter, formed a team and pursued the case. The next day, i.e., on 20.03.2021, at about 4:30 PM, he seized 324 grams of yellowish powder, suspected to be heroin, kept in 26 soap cases, which was wrapped in white polythene inside a backpack from the possession of both the two accused persons in presence of two civilian witnesses at Bukpui, Ralbawm Ram. He arrested the two accused persons. Before their arrest, it is seen that when he received the information from Assam Rifles, as per the mandate of Section 42(2) of the NDPS Act, the PW-3, the seizing officer, had put the said information in writing, vide Exhibit P-IV (a copy of the information reduced in writing) and Exhibit P-IV(a) is his signature. After the arrest of the accused persons, he submitted the report about it as per the mandate of Section 57 of NDPS Act to his superior officer within the stipulated time.

16. It is seen that the accused and the seized substances were produced first in the Excise and Narcotics Station at Kolasib. Thereafter, investigating officer for the case was appointed and the I.O., namely, Mr. Lalbiakhluna Ralte, S.I. of E & N Department, produced the

accused persons before the Medical Officer, District Hospital, Kolasib for examination as per Section 53 of Cr.P.C., including COVID-19 screening to ensure that they were not suffering from any pandemic virus. The I.O. produced the two accused persons and the seized substances before the court of the learned Judicial Magistrate First Class (JMFC), Kolasib, for the purpose of judicial remand and drawing samples of seized substances for chemical analysis, etc. Accordingly, samples were drawn; packing and sealing were also done in front of the learned JMFC, Kolasib. Photographs of the same were also taken vide Exhibits P-VIII, P-VIII-A, P-VIII-B, P-VIII-C, PVIII-D and P-VIII-E. The inventory of the seized substances was also prepared vide Exhibit P-IX-copy of the same and Exhibit P-IX-(a) is his signature.

17. It is also seen that an application for certification of correctness of inventory, photographs and sample of seized substances was also made vide Exhibit P-V. He also prepared list of samples drawn with serial nos. 1 to 26, reflecting respective weight of each sample packet, each drawn from each soap case containing nine pages which have been exhibited as Exhibit P-VII.

18. It is also seen that Exhibit P-VIII is copies of photographs taken covering the whole exercise of sample packing, sealing, etc., with pictures, photographs of the learned JMFC and Excise personnel vide the aforesaid Exhibit P-VIII, P-VIII-A, P-VIII-B, P-VIII-C, PVIII-D and P-VIII-E.

19. It is also seen that the complaint sheets, inter alia, contained detail of particulars of both the accused persons with passport size photographs on the top right corner pasted on papers with extract of case diary containing two pages.

20. On perusal of the aforesaid exercise of seizing the suspected contraband substances, there is nothing which could be really said that there was any violation of compliance of any mandatory provisions of the NDPS Act. The learned counsel appearing for the appellant has also specifically could not point out any violation of any of the provisions of the NDPS Act while the recovery and seizure of the suspected contraband substances from the accused persons.

21. Now, as far as the depositions of the PWs are concerned, it is seen that five (5) PWs have been examined by the prosecution and they were cross-examined by the defense.

22. From the defense side, two (2) DWs have been examined and they were accordingly cross-examined by the prosecution.

23. PW-1, namely C. Vanlalmawia, is a seizure witness and he deposed that on 20.03.2021, at around 4:30 PM, the Excise personnel seized 324 grams of yellowish powder, suspected to be heroin, kept in 26 cases, from the possession of Zarzova, S/o Tlangkhuma and Lalduhawma, S/o Thangmawia at Bukpui, Ralbawm ram. He deposed that the accused were arrested at the spot and he was present when the seizure and arrest were made.

In his *cross-examination*, he stated that he did not know that the seized article belonged to the accused.

24. PW-2, namely, H. Selsiama, who is also a seizure witness, has deposed that on 20.03.2021, at about 4:30 PM, the Excise personnel seized 324 grams of yellowish powder, suspected to be heroin, kept in 26 cases, from the possession of Zarzova, S/o Tlangkhuma and Lalduhawma, S/o Thangmawia at Bukpui, Ralbawm ram. He deposed that the accused were also arrested at the spot and he was present when the seizure and arrest were made. He also deposed that the

accused were arrested at the spot and he was present when the seizure and arrest were made.

In his *cross-examination*, he also stated the same statement that he did not know that seized articles belonged to the accused.

25. PW-3, S.I. F. Lalnuntluanga, Exercise and Narcotics, has deposed that he knew the accused persons and the seized articles were seized from them. He deposed that on 19.03.2021, he received reliable information from 46th Assam Rifle about bulky transportation of suspected heroin within Kolasib area and based on that, he along with the team went in pursuance of the report. He deposed that on the next day, i.e., 20.03.2021, at about 4:30 PM, he seized 324 grams of yellowish powder, suspected to be heroin, kept in 26 soap cases, concealed in a white polythene inside a black color backpack, from the possession of both the accused Zarzova and Lalduhawma at Bukpui, Ralbawm Ram. He deposed that the arrest and seizure was made in presence of the independent civilian witnesses and intimation about the incident was given to the relatives of both the accused through the mobile phone of the accused Lalduhawma. He deposed that on the same day, he submitted a report of the seizure and arrest to the officer-in-charge, E & N, Kolasib.

He deposed that Exhibit P-IV was the information recorded by him and Exhibit P-IV(a) was his signature. Exhibit P-II was the seizure and arrest memo and Exhibit P-II(a) was his signature. Exhibit P-I was the report of seizure and arrest submitted to O.C. and Exhibit P-I(a) was his signature.

In his *cross-examination*, he deposed that the seized articles were not seized from the physical possession of the accused. He deposed that the seized articles were seized from a vehicle (Renault Kwid), but

he could not recall the color of the vehicle. He deposed that the accused Lalduhawma was not sitting inside the same vehicle. He deposed that one person other than accused Zarzova was sitting inside the same vehicle from where the said articles were recovered and the said other person was not arrested by him and the vehicle was not seized by him. He deposed that the place where the seized articles were seized is not within Aizawl jurisdiction. He deposed that before giving written information to E & N, Kolasib, he seized the said seized articles and also arrested both the accused.

In his *re-examination*, he deposed that the person inside the car was a decoy customer and the said car had been used by him. He deposed that he neither seized the car and nor arrested the decoy customer.

In his *re-cross-examination*, he stated that he did not have any documentary proof that the said vehicle and the person sitting inside the car was a decoy customer and the vehicle was a decoy vehicle.

26. PW-4, S.I. Lalbiakhluna Ralte, the I.O., Excise and Narcotics Station, Kolasib, deposed that he knew the accused persons and the seized articles were seized from them. He deposed that on 20.03.2021, at 4:30 PM, SIEN F. Lalnuntluanga, Anti-Narcotic Squad and party, performed duty at Ralbawm Ram, Bukpui area and they had arrested Zarzova and Lalduhawma in connection with seizure mentioned in column 3 of the sheet. He deposed that the accused persons were sent to District Hospital, Kolasib for medical examination and the examination report showed that they were medically fit to be kept in custody. He deposed that he submitted a report of seizure and arrest to the O.C., Excise and Narcotics Station, Kolasib and a case no. EX-KLB/30/21 dated 21.03.2020, under Section 21(c) of NDPS Act, 1985, was registered against the accused persons and he was endorsed the

case for further investigation. He deposed that during the course of his investigation, he examined the accused persons, seizing officer and the witnesses. He deposed that he also recorded their statements and sent sample of the seized articles to FSL and the result of which, showed that purity of the seized heroin was 77% w/w at the time of examination. He deposed that he also visited the place of occurrence along with seizure witnesses and his investigation revealed that the seized articles were recovered from the possession of two persons while they tried to hand over the seized articles to another person. He deposed that the two accused brought the said articles from Mauchar and they were arrested at the roadside of Serkhan to Bagha Road, 8 km away from Bukpui. He stated that after having found a prima facie case well established against the accused persons, under Section 21(c) of the NDPS Act, 1985, he charged them for violation of Section 8(c) of the NDPS Act, 1985. He deposed that he sent the complaint along with the relevant documents to the competent authority for perusal and further proceeding of the case.

He deposed that Exhibit P-III, was the complaint sheet and Exhibit P-III(a) was his signature. Exhibit P-VI was his application for inventory. Exhibit P-VII, containing 9 pages, was list of samples drawn before the Magistrate. Exhibit P-VIII, Exhibit P-VIII-A, Exhibit P-VIII-B, Exhibit P-VIII-C, Exhibit P-VIII-D and Exhibit P-VIII-E are photographs taken at the time of inventory and at the place of seizure and arrest. Exhibit P-IX is the certificate of the inventory and Exhibit P-IX(a) was his signature. Exhibit P10-A to Exhibit PX-Z are representative samples.

In his *cross-examination*, he stated that it is not a fact that the seized articles were seized from inside vehicle. He stated that it is not a fact that accused Lalzarzova was sitting inside the vehicle when he was

arrested. He stated that it was a fact that both the accused, while arrested, were holding the seized articles. He stated that it was a fact that another person other than the accused persons was present at the place of occurrence and it was a fact that one private car was there at the place of occurrence which was not owned by the two accused. He stated that the said one person who was present at the place of occurrence was not arrested and the vehicle was also not seized by the Excise personnel. He stated that it was a fact that the accused Lalduhawma did not plead his guilt before him and also in the statement which he recorded under Excise custody. He stated that it was not a fact that there was one person other than the two accused, which was civilian at place of occurrence and he was not arrested. He stated that the aforesaid person was not included in the witness list. He stated that he did not have the documentary proof that the said vehicle and the person sitting inside the car was a decoy customer and a decoy vehicle.

In his *re-examination*, he stated that at the place of occurrence, the person other than the accused persons was their decoy. He also stated that the private car at the place of occurrence was not own by the accused persons and the same was hired by his department.

27. PW-5 is the FSL Expert, Aizawl, namely, Lalmuanawma, who deposed that on 25.03.2021, they received samples of suspected heroin packed in 26 polythene packets in connection with Ex KLB Case No. 30/21 dated 21.03.2021. The samples were packed and sealed and enclosed in a paper envelope sealed with was seal. He deposed that he along with Dr. R. Lwmzuali conducted examination of the said samples and the results show that the samples contained heroin with a purity of about 77% w/w at the time of the examination.

Exhibit P-V is the examination report and Exhibit P-V(a) is his signature.

PW-5, in his *cross-examination*, deposed that he did not know whether or not the seized articles was owned by accused Zarzova and Lalduhawma and he also deposed that he did not know from whose possession such articles were seized.

28. DW-1, namely, Mary Jone, deposed that she is the wife of the accused Zarzova and that they permanently reside at Mauchar. She deposed that her friend, namely, Rohlupuii, owner of the seized articles, was her childhood friend and came to Mauchar for business. She stated that her friend begged them to deliver her goods to NEEPCO and with good deeds and without knowing the contents of the package, her husband Zarzova and Lalduhawma went to deliver the said package to the location that Rohlupuii gave them. She stated that later she came to know that they were arrested by Excise Personnel. She also stated that they did not know what was inside the package as it was perfectly packed and that she gave all the cost for hiring the bike.

DW-1, in her *cross-examination* by the Prosecution, she stated that on 20.03.2021, her husband accused Zarzova had actually hired the bike owned by Lalduhawma. She stated that it was a fact that Rohlupuii had sent her husband to deliver the goods and had also promised her husband of giving money. She deposed that the goods package had never been opened by her husband.

29. DW-2, namely, H.K. Lalkhuma, deposed that the accused Lalduhawma is his nephew and he took care of him since childhood. He deposed that they mostly stayed in Kolasib and that Lalduhawma played football since childhood and used to play under academy and even played for Mizoram in Subroto Cup, under-14 Tournament. He

was even hired by the Air Force Football Club, Delhi, but he could not stay in Delhi for long and came back home. He deposed that due to financial issues at their home, Lalduhawma stopped playing football outside Mizoram. He deposed that he asked Lalduhawma to go to Mauchar with his bike and make use of his bike for rental purpose as there was no vehicle service in Mauchar. He deposed that even on the day of the incident, Lalduhawma was hired by Zarzova and he did not have any knowledge about the seized article. He further deposed that Lalduhawma did not have any involvement in this alleged incident and he stayed at Mauchar just to earn money from rental as they have faced financial issues at their home.

In his *cross-examination* by the Prosecution, he deposed that it was a fact that he was not present on the day of the incident and as such, he did not know whether any contraband articles had been seized from the possession of Lalduhawma and Zarzova at Ralbawm Ram, Bukpui area. He deposed that it was a fact that accused Lalduhawma never indulged in taking illicit drugs. He also deposed that he did not know whether accused Lalduhawma had knowingly let the co-accused hired his bike or not.

30. From the aforesaid examination and cross-examination of the PWs and the DWs, one fact becomes clear that the accused no. 2, i.e., Lalduhawma was, in fact, hired by the other accused, Zarzova, i.e., the appellant for use of his bike to deliver the seized articles. It has also come to the light that Lalduhawma used his bike for financial assistance and used the same for rental purposes by dropping people. It has also come to the light that no narcotic substance was, in fact, seized from his possession as the same has been clarified by PW-3 & PW-4 in the instant case. Therefore, from the evidence available on record, this Court is also of the opinion that the learned Fast Track

Court has rightly acquitted the accused no. 2, i.e., Lalduhawma in the instant case.

31. As far as the appellant is concerned, though a defence has been taken that the appellant was, in fact, not aware of the contents of the packet which he carried to deliver at NEEPCO, from the evidence available and from the statements of the seizure witnesses, i.e., PW-1 and PW-2 as well as the Seizing Officer and the I.O., it is clear that the seized articles were, in fact, seized while the appellant was holding the same and about to deliver the same to the decoy customer, engaged by the Excise & Narcotics Department.

32. From the evidences of PW-3 & PW-4, it has come to light that a decoy customer was engaged by the Excise & Narcotics Department and he travelled in a vehicle, i.e., Renault Kwid for the whole operation. It has also come to the light that the decoy customer was sitting inside the vehicle and along with him, the presence of the appellant inside the vehicle cannot be ruled out from the available evidence. It has come to the light from the evidence available that inside the vehicle, the appellant and the decoy customer were, in fact, available and while the seized articles were being hold by the appellant, the Excise & Narcotics Department team had arrested and recovered the seized articles.

33. Though, there are some minor discrepancies in the statements of PW-3 & PW-4, this Court is of the opinion that the same is negligible and the same cannot be fatal to the prosecution's case. The discrepancy is regarding whether the contraband articles were seized from inside the vehicle or from outside the vehicle, as PW-3 stated that the same was seized from inside the vehicle, whereas, the PW-4 stated that the same was not seized from inside the vehicle. However, the fact remained that the seized articles have been seized from the appellant and he was inside the vehicle along with the decoy customer.

34. It is seen that DW-1, who is the wife of the appellant had deposed that one of her friend, namely, Rohlupuiii had given the packet to her husband, i.e., Zorzova to give it to some person for payment of money. Such defence cannot be relied upon without any corroboration.

35. It is difficult to understand that if a person gives some packets to be delivered to NEEPCO and the person who delivers the same did not know or did not ask anything about the contents of the packet. This is also not explained as to who in the NEEPCO was supposed to be given those packets. Therefore, in the considered view of this court, the evidence and the defense story that the packet was given to the appellant by the friend of DW-1, cannot really be relied upon.

36. This court has also gone through the examination of the accused person, under Section 313 of the Cr.P.C., wherein, the appellant had denied his involvement in the case and denied that he possessed the seized articles. In his clarification, he took the defense that he was requested by the bag owner, Rohlupuii, to deliver the same bag to NEEPCO without knowing the contents of the bag. He stated that he did not open the bag and therefore, was not aware of the contents of the bag until he was arrested. Therefore, he stated that he was innocent.

37. As discussed above, the clarification given by the appellant, under Section 313 of Cr.P.C. has not been corroborated by any evidence which could be brought in by the defense in the instant case other than the statement of the wife of the appellant, DW-1.

38. Having discussed the evidence as well as the procedure that has been followed by Excise and Narcotics Department in the instant case, it is seen that though there was an argument that the search of the appellant was not conducted in terms of the provisions of the NDPS Act, this court is of the same view as the view taken by the learned Fast

Track Court that no search as such has been carried out in the instant case on the two accused persons. From the evidence available, in fact, it is seen that without any search being carried out, the seized articles were recovered from the possession of the appellant. Therefore, the contention of non-compliance of Section 50 of the NDPS Act is negated and the view and the conclusion of the learned Fast Track Court is confirmed.

39. This court has also discussed the procedure that has been followed in the instant case from the very beginning of writing of the report about source information, the seizure of the articles, sampling of the articles, certification by the Judicial Magistrate First Class, the evidence regarding the whole procedure by evidence of photographs and until the receipt of the FSL report, it is seen that the whole procedure has been done in terms of the provisions of the NDPS Act.

40. This court has also considered the fact that no specific incident of any violation of the procedure adopted by the Excise and Narcotics Department in seizure and sampling of the seized articles has been pointed out by the learned Senior Counsel appearing for the appellant. This court has also considered that the cases that have been relied upon by the learned Senior Counsel appearing for the appellant.

41. In the case of ***Khet Singh*** (supra), the Honorable Supreme Court has held that if the search and seizure was in complete defiance of law and procedure and there was any possibility of evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that evidence is not liable to be admissible in evidence. However, taking into consideration the factual matrix involved in the instant case, neither the defense could point out any such omission nor this court could find any infirmities in compliance of the procedure laid down under the NDPS Act. Therefore,

in the considered opinion of this court, the case is misplaced and cannot be of any help to the appellant.

42. As far as the case of ***Noor Aga*** (supra) is concerned, in the facts and circumstances of the instant case, the ratio of the aforesaid case also cannot be cannot be of any help to the to the appellant, though the learned senior counsel has relied on this case to bring home his argument that there was inconsistencies in the evidence and therefore, the evidence being doubtful, the same cannot be relied on and cannot be considered as admissible evidence. In the instant case, this court did not find any such material discrepancies in the evidence which would make the evidence of the witnesses inadmissible.

43. In view of the aforesaid discussion and findings of this court, this court is of the considered opinion that the instant appeal does not have any merit and therefore, the appeal is dismissed.

44. The trial court records to be sent back.

JUDGE

Comparing Assistant