
(2012) 06 GAU CK 0030

In the Gauhati High Court

Case No : Criminal Appeal (J) No. 60 of 2006 with Cr. A. No. 02 of 2007

Sri Ranjit Sarkar

APPELLANT

Vs

Sri Sandip Das and Another

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(4)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(C), 25, 41, 42, 42(1)

Citation : (2012) 3 GLD 513

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : H.K. Bhowmik, for the Appellant; P.K. Biswas, Asst. SG, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—Criminal Appeal (J) No. 60 of 2006 and Criminal Appeal No. 02 of 2007, taken up together for judgment since both the appeals preferred against a single judgment dated 16.06.2006, passed by learned Special Judge (District & Sessions Judge), West Tripura, Agartala, in Special Case No. 18 of 2006. This single judgment shall govern both the appeals.

Criminal Appeal (J) No. 60 of 2006 filed by the convict-appellant Ranjit Sarkar u/s 374(2) of CrPC, challenging the judgment and order of conviction and sentence dated 16.06.2006, passed by learned Special Judge, in Special Case No. 18 of 2006, convicting the appellant u/s 20(C) read with Section 25 of the NDPS Act, 1985 and sentencing him to suffer RI for 12 (twelve) years and to pay a fine of Rs. 1,00,000/- (rupees one lakh), in default of payment of fine to suffer further rigorous imprisonment for 3(three) years.

Criminal Appeal No. 02 of 2007 is filed by the Inspector of Customs, DFP Unit, Customs Division, Tripura, Agartala u/s 378(4) of CrPC, challenging the judgment

and order of acquittal dated 16.06.2006, passed by learned Special Judge, West Tripura, Agartala, in Special Case No. 18 of 2006, acquitting the accused-respondent Sanjit Sarkar from the charge framed against him u/s 20(C) of the NDPS Act, 1985.

Heard learned counsel, Mr. H.K. Bhowmik for the appellant-Ranjit Sarkar in Criminal Appeal (J) No. 60 of 2006 and for the respondent-Sanjit Sarkar in Criminal Appeal No. 02 of 2007 and also heard learned Asstt. S.G., Mr. P.K. Biswas for the respondents in Criminal Appeal (J) No. 60 of 2006 and for the appellant in Criminal Appeal No. 02 of 2007.

2.1 Prosecution case, in short is that on 24.01.2006 at about 1830 hrs., a secret information was received at the Divisional Preventive Force Unit, Customs Division, Agartala, Tripura by the complainant Sandip Das, Inspector of Customs, that a Maruti Van vehicle, bearing No. TR-O 1-F-0394, carrying ganja and was proceeding towards Agartala from Teliamura, and on that information the complainant Sandip Das, Inspector of Customs along with Superintendent of Customs, J.L. Bhowmik with other staff left for Khayerpur on Agartala-Teliamura Road and ambushed on the road waiting for arrival of the offending vehicle. At about 1850 hrs., they found Maruti Van vehicle, bearing No. TR-01-F-0394 with abnormal high speed, running towards Agartala, and they raised signal to stop the vehicle but the vehicle accelerated its speed and kept moving faster towards Agartala defying the signal. The Customs officials with their Departmental vehicle chased the offending vehicle from behind. After proceeding to some extent, the offending vehicle stopped and the driver and another person, who were in the vehicle, fled away from the vehicle and the Custom officials, even after effort, could not detain those persons, who disappeared in the darkness. The offending Maruti vehicle was searched by the Customs officials in presence of two passersby (PW 3 and PW 4) and found three bags of ganja weighing about 42 Kg., and thereafter, they took the vehicle with ganja and the witnesses to their office at Agartala and seized the vehicle along with ganja, preparing seizure list/inventories, etc. The Inspector of Customs, Sri Sandip Das reported the information of search and seizure to the superior officers of the Department in writing (Exbt. 2). He also obtained a joint statement (Exbt. 7) of witnesses, namely, Priti Bhushan Biswas and Sukhamoy Choudhury, in whose presence the vehicle was intercepted and seized and took their signature in the seizure list.

2.2 On 27.01.2006, the Inspector of Customs, Sri Sandip Das lodged a written complaint (Exbt. 3) before the Special Judge, West Tripura, Agartala, through learned Asstt. Solicitor General, against the unknown driver and owner of the alleged Maruti Van vehicle, bearing No. TR-01-F-0394 and another unknown person, who was in the vehicle and he himself started inquiry/investigation of the matter. In course of inquiry, he collected information regarding ownership of the vehicle from the District Transport Officer and found that accused Ranjit Sarkar (convict-appellant) was the recorded owner of the vehicle, who surrendered before the Court on 20.02.2006, and he interrogated the accused in the jail

custody and obtained a written statement of the accused Ranjit Sarkar (Exbt. 4).

2.3 It is the case of the prosecution that accused Ranjit Sarkar was the owner of the vehicle and his brother Sanjit Sarkar (acquitted accused) was the driver of the vehicle at the relevant time of occurrence. The identity of the other person, who was in the vehicle along with the driver, could not be ascertained during investigation.

3.4 In course of inquiry/investigation, sample of seized ganja was sent to the State Forensic Science Laboratory and report was obtained, which disclosed that the seized article was ganja (Cannabis). On completion of investigation, he submitted report in final form against accused Ranjit Sarkar as owner of the alleged offending vehicle and accused Sanjit Sarkar as driver of the offending vehicle for commission of offence punishable u/s 20(C) of the NDPS Act.

2.5 Learned Special Judge framed charges against accused Ranjit Sarkar u/s 20(C) of the NDPS Act and alternatively u/s 20(C) read with Section 25 of the Act, to which the accused pleaded not guilty and claimed to be tried. Charge was also framed against accused Sanjit Sarkar for commission of offence u/s 20(C) of the NDPS Act, to which he also pleaded not guilty and claimed to be tried.

2.6 In course of trial prosecution examined 5(five) witnesses, namely, (1) Sri Sandip Das, (2) Sri Jibanlal Bhowmik, (3) Sri Priti Bhusan Biswas, (4) Sri Sukhamoy Choudhury, (5) Sri Shyamal Nath.

2.7 Out of the above witnesses, PW 1 is the complainant i.e. Inspector of Customs, who is the star witness of the prosecution, PW 2 is the Superintendent of Customs and he was accompanying PW 1 at the time of detention of the alleged vehicle and search and seizure of the ganja. PWs 3 and 4 are the independent witnesses, who according to the prosecution, were present on the spot when the vehicle was detained and their joint written statement was also obtained, which is marked as Exbt. 7. PW 5 is another Inspector of Customs, who according to the prosecution was also present at the time of alleged detention and seizure of the vehicle with ganja.

2.8 Prosecution heavily relied on Exbt. 4, a statement of Ranjit Sarkar, obtained by the complainant at the time and seizure of the vehicle with ganja.

2.9 After recording of prosecution evidence was over, the accused persons were examined u/s 313 of Cr PC and they declined to adduce any evidence.

2.10 At the conclusion of trial, learned Special Judge based on Exbt. 4 held accused Ranjit Sarkar guilty of committing offence punishable u/s 20(C) read with Section 25 of the NDPS Act and sentenced him as aforesaid.

Learned Special Judge acquitted accused Sanjit Sarkar considering that there is no cogent evidence against him as the driver of the offending vehicle at the time of its interception except that of the statement (Exbt. 4) made by co-accused Ranjit Sarkar.

ARGUMENTS ADVANCED BY THE PARTIES

3.1 It is submitted on behalf of the convict-appellant Ranjit Sarkar as well as the acquitted accused Sanjit Sarkar that prosecution case has no foundation and the finding of the learned Special Judge is based on no legal evidence. The allegation of interception of the vehicle and recovery of ganja therefrom has not been supported by any cogent evidence except that of the oral statement of PWs 1, 2 and 5. Learned Special Judge most wrongly and illegally relied on Exbt. 4, which according to law, cannot be treated as a confessional statement of accused Ranjit Sarkar and the learned Special Judge wrongly applied the same against the accused and held him guilty, and therefore, the finding of conviction and sentence of accused Ranjit Sarkar is liable to be interfered and set aside. It is also argued that nobody identified Sanjit Sarkar as the driver of the vehicle. There is no legal evidence on record that the accused Sanjit Sarkar was the driver of the offending vehicle at the time of alleged occurrence. Documents of the vehicle, including driving licence of the driver, have not been produced and proved. Exbt. 4, the statement of accused Ranjit Sarkar since cannot be treated as a piece of legal evidence, learned Special Judge has rightly refused to apply the same against accused Sanjit Sarkar, and therefore, acquittal of Sanjit Sarkar from the charge was justified and does not deserve interference.

3.2 Learned Asstt. S.G., Mr. P.K. Biswas has frankly submitted that except Exbt. 4 there is no other item of evidence to implicate accused Ranjit Sarkar. Regarding involvement of accused Sanjit Sarkar, learned counsel Mr. Biswas has submitted that if Exbt. 4 is relied on then Sanjit Sarkar is also liable to be punished u/s 20(C) of the NDPS Act.

NATURE OF THE PROCEEDINGS UNDER THE ACT

4. The Narcotic Drugs and Psychotropic Substances Act, 1985 is a special law enacted by the Parliament with an object for controlling and regulating the operations relating to narcotic drugs and psychotropic substances. It was felt that due to fast increase of consumption of drugs, the country has becoming one of the centers of Narcotics-under-world-criminals and in order to curb this, the NDPS Act was brought into force. The Act has prescribed stringent punishment for the offenders and special procedure to be followed. Under the Act, specific procedure has been laid down for arresting the persons, their search, and deposit of articles recovered, taking sample therefrom, etc. under different Sections prescribed in Chapters V and V (A) of the Act. The Act prescribes the application of the provision of the Criminal Procedure Code in so far as the same which is not inconsistent with the provisions of the Act with respect to the issue of warrants, arrest, searches and seizures thereunder. The legislature deliberately made such provisions and has given some safeguards to the accused persons also so that they may not be harassed unnecessarily and these are almost mandatory provisions. Ignorance and/or non-compliance of the prescribed provisions by the Investigating Agency is fatal for the prosecution. The benefit of such non-compliance will definitely facilitate a wrongdoer to escape from punishment.

APPRECIATION OF EVIDENCE

5.1 I have meticulously gone through the evidence on record. PW 1, 2 and 5 made categorical statement that on 24.01.2006 at about 1830 hrs., they received secret information that a Maruti Van vehicle, bearing No. TR-OI-0394, carrying ganja, was proceeding towards Agartala from Teliamura through Agartala-Teliamura road and on that information they ambushed at Khayerpur on the road and at about 1850 hrs, they found the said Maruti Van vehicle, proceeding towards Agartala and they raised stop signal but the vehicle did not stop rather accelerated its speed and was proceeding towards Agartala and they chased behind the vehicle with their Departmental vehicle, and after a while the driver and other person, accompanying the driver fled away leaving the vehicle abandoned on the road. They searched the vehicle and found three gunny bags containing ganja weighing about 42 kg. They took the vehicle with ganja to their office at Agartala, prepared seizure list of the vehicle and the ganja and kept it in their custody.

5.2 PWs 3 and 4 may be termed as chance witnesses. Admittedly, they are residents of Narsingarh, far away from the place of interception of the alleged offending vehicle. PW 1 in the complaint as well as in his final report after inquiry and in his deposition stated that they were passersby waiting on the road for availing a vehicle for journey and on request they accompanied Custom officials to their office and signed the seizure list/inventory. PWs 3 and 4 stated that they were standing on the road at Khayerpur and at that time, Custom officials arrived there and they (Custom officials) gave stop signal to the vehicle, which was running towards Agartala but the vehicle did not stop, and thereafter, the Custom officials with their vehicle chased behind the offending vehicle. They further stated that the offending vehicle was left abandoned on the road and it was taken to the Custom's office at Agartala and on the request of the Custom officials they also went to the Custom's office, where on request of the Customs officers they signed the seizure list. As per dictation of the Custom officers, PW 3 also wrote a statement (Exbt. 7) and that was signed by both the witnesses. They categorically stated that the vehicle was not, searched in their presence and that they did not see the Custom officials to recover ganja from the vehicle. They were declared hostile by the prosecution and were cross-examined referring to the statement made In Exbt. 7.

5.3 PW 1 in cross-examination stated that there were some other people also at the place where the vehicle was left abandoned but no witness from the locality, who ought to be a nature witness was relied by the prosecution. There is also no explanation by the prosecution as to why no credible witness of the locality/place of occurrence was listed. The statement of PWs 3 and 4 may be relevant for consideration as per the provisions of Section 53(a) of the NDPS Act but in the peculiar facts and circumstances of the present case Exbt. 7, a joint statement of PWs 3 and 4, cannot be relied in view of the clear statement made by them that it was recorded at the dictation of custom officers.

5.4 Certain other factors in the evidence on record makes it clear that PWs 3 and 4 might not have seen the actual detention/ interception of the vehicle and it may happen that they had been at office of the Customs at Agartala and were cited as witnesses.

Prosecution case is that the Custom officials ambushed on the road at Khayerpur. According to the prosecution, PWs 3 and 4 were also present there, waiting for a vehicle for their journey. When the offending vehicle was found by the Custom officials they raised stop signal but the vehicle did not stop and rushed towards Agartala and the Custom officials with their vehicle chased behind the offending vehicle. There is nothing in the evidence on record that PWs 3 and 4 also boarded the vehicle of the Custom officials and together chased behind the offending vehicle. PW 1 stated that at advance of about two kilometers on Khayerpur where the offending vehicle was first found it was left abandoned by the driver on the road. PW 2 stated that the offending vehicle was left at a distance of about half kilometer from the place of ambush. PW 3 stated that the offending vehicle was stopped about 100 feet away from the place it was ambushed by the Custom officials. PW 4 stated that the offending vehicle was stopped at a distance about half meter from the place of ambush. PW 5 stated that the offending vehicle was left on the road about one kilometer away from the place of ambush. PWs 3 and 4 were present at the place of ambush. They might not witness the actual interception of vehicle after it was chased by the custom officials. Therefore, the statement of PWs 3 and 4 that the vehicle was not searched in their presence and that they did not see to recover any ganja from the vehicle cannot be burst aside or termed as a false statement.

5.5 Column 3 of Exbt. 1, the alleged inventory/seizure list, shows the place, date and time of seizure/detention near Kyayerpur on Assam-Agartala road on 24.01-2006 at about 1900 hrs., whereas all the witnesses including PW 1 stated that after detention of the vehicle they came to the Custom office at Agartala along with the vehicle detained and prepared the seizure list/inventory (Exbt. 1) at Agartala, PWs 3 and 4 stated that they were asked to sit in the office of the Custom and their signatures were obtained in the seizure list and that they did not see seizure of any ganja. In the factual circumstances, as presented, the statement of PWs 3 and 4 that they have not seen seizure of ganja cannot be ruled out. If the ganja with the vehicle was intercepted at Khayerpur, the search and seizure including that of the inventory would have been prepared at the spot. This has made the prosecution case seriously doubtful.

5.6 There is also no evidence as to how the offending vehicle was brought to the Custom's office, who drove the vehicle, while according to the prosecution the driver had fled. It was the duty of the prosecution to elaborate the fact regarding manner of taking the vehicle to the Custom's office at Agartala. Further, in Exbt. 1 i.e. inventory and/or the seizure list, it is only mentioned that three gunny bags, containing cannabis/ganja of different quantities and a Maruti Van vehicle, bearing registration No. TR-Ot-F-0394, were seized but no elaboration or

description in the inventory that the ganja was found in the vehicle when those were seized.

5.7 PWs 3 and 4 clearly stated that they found no bag of ganja. They were told that ganja was seized. The complainant produced the bags of ganja, marked as Exbt. MO. 1 series before the Special Court on the date of his examination i.e. on 23.05.2006. Those were all along kept in the Custom's godown. No label was pasted with signatures of the witnesses on the bags. No evidence that the bags were sealed in presence of the witness. These all are serious infirmities on the part of the prosecution and the evidence of PWs 3 and 4 that they did not see the bags of ganja alleged to have seized cannot be rejected altogether.

EVIDENTIARY VALUE OF EXBT. 4

The accused appellant Ranjit Sarkar has been involved in the offence on the allegation that the vehicle belonged to him according to records collected from the office of the District Transport Officer. Documents of the vehicle have not been placed on record. The District Transport Officer has also not been examined. Exbt. 4, a statement of accused Ranjit Sarkar in "question answer" form obtained by the Custom officials, while he was in jail custody, is the only piece of evidence based on which learned Special Judge found him guilty and convicted him accordingly. Since Exbt. 4 has been seriously relied on by the prosecution and it is accepted by the learned trial Judges let me reproduce here the English version of Exbt. 4, which reads thus:

Interrogatory statement of Shri Ranjit Sarkar, S/o. Shri Sunil Sarkar owner of the Maruti Van bearing Regn No. TR-01-F-0394 involved in the Special Case No. 18/2006, recorded in the jail custody, Central Jail. Agartala on 07.03.06, as per Hon"ble Special Judge order dt. 7.3.06.

Question No. 1:-

What is your name, father's name, address and what is your profession?

Answer: Shri Ranjit Sarkar, S/o. Shri Sunil Sarkar, Village Gourangatilla, Teliamura, P.O. Teliamura, Tripura (West). My profession is business. I have the business of cassettes and vehicles.

Question No. 2:- How many vehicles do you have? Write the number of the vehicles. On which road do these vehicles run?

Answer:- I have two Maruti vans and the registration number of those are (TR 01 F 0394) and TR 01 F 0543 respectively. I give my two vehicles on rent for Government work and Private work/ purpose.

Question No. 3:- Write the names of the drivers of your two vehicles, their fathers' name and complete address.

Answer:- There is no permanent driver of my vehicles. As per necessity I take driver from the syndicate according to the necessity. Sometimes my younger

brother Sanjit Sarkar drives the vehicle(s). He has driving licence. I cannot drive vehicles.

Question No. 4:- On 24.01.06 A.D. last, in the afternoon, who had driven your Maruti Van whose registration No. is TR 01 F 0394 and who had hired (it) 7

Answer:- I do not know anything as to who had driven (the vehicle) or who had hired (the vehicle).

Question No. 5:- You are giving false statement. You know everything being the owner of the vehicle. State the truth, who had driven your vehicle No. TR 01 F 0394 on 24.3.2006 A.D. last?

Answer: - On 24.1.06, I did not know who had driven the said vehicle of mine. On the following day that is on 25.1.06, in the afternoon, I came to know that my brother Shri Sanjit Sarkar had driven the said maruti vehicle and I came to know from my brother Sanjit Sarkar that on 24.1.06, in the evening, the custom officers of Agartala had apprehended the said vehicle alongwith cannabis (ganja) in a place named Khayerpur on Agartala Teliamura road. I further came to know that my brother Sanjit Sarkar on seeing the custom officers on the road, fled away leaving my vehicle alongwith the goods (cannabis).

Question No. 6:- At that time, was there any other person in your vehicle except Sanjit Sarkar? If so, then write the name father's name and address of that person.

Answer: -(I) do not know anything about this matter.

Question No. 7:- Who is the owner of the "ganja" (cannabis) seized, from your vehicle? From where were those "ganja" (cannabis) collected and with what purpose and where were being transported?-- write these elaborate.

Answer: - I know nothing in this matter either.

Question No. 8. - Then who looks after your Maruti" vehicle No. TR 01 F 03947 Who gave the vehicle on rent on 24.1.06 A.D. last?

Answer:-I and my brother look after my two vehicles. On that day most probably () had decided upon giving the vehicle on rent.

The above statement cannot be treated as a confessional statement. At best, it may be a statement recorded during investigation or inquiry. Since it was a statement of the accused while he was in custody in connection with the case it cannot be applied against him. Learned Special Judge referred to Section 67 of the NDPS Act, while relying on Exbt. 4 as a statement admissible in evidence under that Section. Section 67 of the NDPS Act reads thus:

Section 67- Power to call for information, etc.--Any officer referred to in Section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,-

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

The above provisions, nowhere prescribes that a statement of an accused, recorded by an officer authorized to make an inquiry/investigation under sub-section (2) of Section 41 of the Act, is admissible as a piece of evidence against the accused. We should not forget the provisions prescribed in Article 20 of the Constitution of India, which prescribed that person accused of any offence shall be compelled to be a witness against him. Question No. 5 of Exbt. 4 makes it clear that the Custom officials compelled the accused Ranjit Sarkar to make the statement regarding driver of the vehicle. The accused Ranjit Sarkar in the entire Exbt. 4 made statement categorically that he had no knowledge of driving and that he had no knowledge about carrying of ganja by of the vehicle on the alleged date of its detention by the Custom officials. In cross-examination, PW 1 also made categorical statement that accused Ranjit Sarkar during interrogation told him that the accused knew nothing about alleged carrying of ganja by his vehicle on the date of alleged incident. Under such circumstances, if the knowledge of the accused is not proved by the prosecution regarding the vehicle involved in carrying ganja, it was not proper to hold the accused guilty and to punish him for the offence.

Exbt. 4 is a document having no force in the eye of law. It cannot be treated as a confessional statement of accused Ranjit Sarkar. Finding by the learned Special Judge, based on Exbt. 4, therefore, cannot sustain and is liable to be interfered and set aside.

DELAY IN LODGING FIR AND NON-COMPLIANCE OF SECTION 52(3) OF THE NDPS ACT.

6. Further, the alleged search and seizure was made on 24.01.2006. The complaint was lodged on 27.01.2006. What prevented the complainant in lodging the complaint on the following day of detention and seizure, no explanation advanced in the evidence on record. Moreover, the seized ganja, according to PW 1, was kept in the Central Go-down, Divisional Office, Customs, Agartala. Nothing is in the evidence on record that the bags of ganja were sealed at the time of seizure. Admittedly, it was kept in the custody complainant whereas Section 52(3) of the NDPS Act prescribes that every person arrested and article seized under sub-section (2) of Section 41, Section 42 Section 43 or Section 44 shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station or the officer empowered u/s 53 of the Act. This provision has not been complied by the authority, and therefore, the accused persons are entitled to get the benefit of doubt.

NON-COMPLIANCE OF SECTION 42 OF THE NDPS ACT

7. It is the case of the prosecution that on the basis of secret information received by the complainant, the informant along with other Custom officials left for Khayerpur and ambushed on the road to detain the offending vehicle. The information was specific that the vehicle was carrying ganja from Teliamura to Agartala. The Complaint was filed on 27.01.2006. Nothing stated in the complaint that the information so received was taken down in writing. No such documents placed during trial. In his deposition PW 1 stated that on 24.01.2006 at 1600 hrs., he received secret information over telephone about the vehicle, likely to carry ganja from Teliamura to Agartala and he wrote down the information. But no such information recorded by PW 1 annexed with the complaint, which filed on 27.01.2006. At the time of trial also nothing of the sort was produced before the trial Court. Section 42(1) of the Act prescribes that such information if received should be taken down in writing and sub-section (2) of Section 42 of the NDPS Act prescribes that he should, inform the immediate superior officer within 72 hours. Exbt. 2 shows that a written information was sent to the Deputy Commissioner of Customs, Agartala on 25.01.2006 after the alleged search and seizure but there is nothing that the information received from secret source over telephone was recorded by the complainant and hence, the requirement of sub-section (1) of Section 42 was not complied. The informant had enough opportunity to record the information and to send it to his superior authority before they went out to have the search and seizure based on such information.

NON-COMPLIANCE OF SECTION 52(A) OF NDPS ACT

8. Section 52(A) prescribes provision regarding disposal of the narcotic drugs and psychotropic substances. Sub-section (2) of Section 52(A) of the Act prescribes thus:

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered u/s 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

In the present case, the complainant failed to comply with the above procedure prescribed by law. As already stated earlier, Exbt. 2 can in no way be termed as an inventory. At best it may be termed as a seizure list of the bags of ganja and the vehicle and nothing more than that. No photograph of the same was taken and the articles seized were not certified by the Magistrate or the Special Judge. Those were kept under the custody of the complainant in the Custom's go-down, and there is no evidence that it was kept sealed in presence of the witnesses. The provision of Section 52(A), therefore, was not complied with.

9. Regarding acquittal of accused Sanjit Sarkar, learned Special Judge opined that the statement made by co-accused cannot be applied against him, and that is the sound law appreciated by the learned Special Judge, which does not deserve interference.

10. In view of the foregoing discussions, the convict appellant Ranjit Sarkar is entitled to be acquitted from the charge and accordingly the judgment and order of conviction of sentence passed by learned Special Judge is set aside and the accused is set at liberty. It is submitted that the accused appellant is in jail custody and serving the sentence. If so, he be set free at once if not concerned with any other case.

11. The seized ganja (Exbt. M.O. 1 series) be destroyed as per the provisions prescribed by law.

12. Criminal Appeal (J) No. 60 of 2006 is accordingly allowed and Criminal Appeal No. 02 of 2007 is dismissed. Send back the L.C. records along with a copy of the judgment.