

**IN THE COURT OF SPECIAL JUDGE:::::BAKSA:::::MUSHALPUR**

Present: Mr. N.U. Ahmed, AJS.

Special Judge,

Baksa, Mushalpur.

Date of judgment :09.12.2022

**Spl. NDPS CASE No. 02/18**

**u/s 20(C) of NDPS Act.**

FIR No.112/2011 , Goreswar P.S, Baksa

Complainant : **The State of Assam**

Represented by : Mr. R. Chetry,  
Learned Special Public Prosecutor,  
Baksa.

Accused : **A1- Sri Dilip Kalita, A2- Sri  
Rajsubram Lahiri and A3- Sri Nripen  
Das**

Represented by : Mr. G. C. Nath  
Learned Advocate.

Date of offence	02.09.2011.
Date of FIR	17.11.2011.
Date of charge-sheet	31.01.2012.
Date of framing charges	03.10.2017.
Date of recording evidence	29.11.2018, 17.12.2019, 12.04.2022 and 17.09.2022.
Date of recording S.D.	30.09.2022.
Date of argument	18.11.2022 & 01.12.2022
Date of judgment	09.12.2022.

**ACCUSED DETAILS**

Rank of accused	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A1	Dilip Kalita	03.09.2011	05.09.2011	u/s 20(b) (ii) (C) of the NDPS Act	Acquitted		Two months and two days.
A2	Raj Subram Lahiri	03.09.2011	05.09.2011	u/s 20(b) (ii) (C) of the NDPS Act	Acquitted		Two months and two days.
A3	Nripen Das	03.09.2011	05.09.2011	u/s 20(b) (ii) (C) of the NDPS Act	Acquitted		Two months and two days.

**JUDGMENT**

1. The instant case arose out of Goreswar P.S Case No. 112/2011 registered u/s 20(B) of the NDPS Act.

2. The prosecution case based on the FIR lodged by one Binod Bezbaruah, S.I of Police in brief is that on 02.09.2011 at about 5.10 pm,

while he was on Naka checking duty with the 7 Dogra Regiment and 10 BN CRPF Camp, Goreswar at Hajalpara near the bridge of Barnadi river in connection with Goreswar P.S GDE No. 34 dated 02.09.2021, then during the Naka checking, three persons were coming on two motorcycles from Udalguri side and they were stopped and on spot interrogation, they revealed that they have some objectionable items inside their carrying bags. Accordingly, he searched the carrying bags and found suspected ganja inside 5 Nos. Of bags carried by Sri Rajsubram Lahiri, Sri Nripen Das and Sri Dilip Kalita. He recovered the ganja weighing about 30 kg in total and he seized the same as per seizure list by observing all formalities. In the FIR, it is further stated that he has taken sample of the seized exhibit for sending the same for FSL examination. Accordingly, he sent the sample to the Directorate of Forensic Science, Assam, Kahilipara, Guwahati-19 and he collected the report and the report reveals that the seized material gave positive result as ganja. Hence, this case.

3. Based on the FIR, the Goreswar P.S case No. 112/2011 was registered and the criminal investigation was put into motion. During the course of investigation, the Investigating Police Officer recorded the statement of the complainant, visited the place of occurrence and drew sketch map of the place of occurrence and after completion of investigation, submitted charge-sheet against accused Rajsubram Lahiri, Sri Nripen Das and Sri Dilip Kalita u/s 20(B) of the NDPS Act.

4. After receiving the charge-sheet, learned Special Judge, Kamrup Amingaon, registered the same as Kamrup Sessions Special Case No. 09(K-R)/2014 (NDPS). On appearance of the accused persons, learned Special Judge, Kamrup Amingaon furnished the copies of the relevant

documents to the accused persons. Thereafter, the learned Special Judge, Kamrup Amingaon transferred this case to the court of Special Judge Kamrup Rangia for trial. The learned Special Judge, Kamrup Rangia after hearing both sides on the point of charge and also scrutinizing the materials on record, framed charge u/s 20(b)(ii)(C) of the NDPS Act against the accused persons which were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. After creation of Baksa District Judiciary, the record was transferred to this court and renumbered as Baksa Spl. NDPS Case No. 02/18.

6. To substantiate the charge against the accused person, prosecution adduced evidence of five witnesses including the informant, Investigating Police Officer and Forensic Expert. Besides, prosecution also relied upon the ejehar (FIR), sketch map, FSL report, charge-sheet, etc.

7. Upon closure of the prosecution evidence, the accused persons were examined u/s 313 Cr. P. C. The defence plea is of total denial of the prosecution allegation and the accused persons declined to adduce defence evidence.

8. I have heard argument advanced by Mr. R. Chetry learned Special PP for the State of Assam as well as Mr. G.C Nath learned Counsel for the defence. I have gone through the case record as well as evidence on record.

**POINT FOR DETERMINATION**

*Whether the accused persons on 02.09.2011 at about 4.30 pm at Hajalpara under Bornadi Bridge under Goreswar P.S were found in possessing 30 kg of ganja which is commercial quantity in contravention of the provision of NDPS Act and thereby committed an offence punishable u/s 20(b)(ii)(C) of the NDPS Act?*

**DISCUSSION, DECISION AND REASONS THEREOF:**

9. Now, let us appreciate the evidence on record to come to just decision of the case.

10. PW1 Sri Pratap Das in his deposition has deposed that he knows the informant but he do not know the accused persons. He further deposed that the occurrence took place about 10 years back and at that time, he was VDP Secretary of the village. On the fateful day at about 3 pm, the informant called him over phone to come to the police station along with some persons. Accordingly, he along with Gaon Bura Sankar Nath and Jagabandhu Biswas went to the police station. At the police station, the informant showed him some ganja lying in the police station and asked him to become seizure witness. He also deposed that the weight of the ganja was 30 kg and out of the total ganja, three samples were drawn and sealed in small packets. The police seized the manual weighing machine vide Exbt.1 is his presence and Exbt.1(1) is his signature. The police also seized the ganja in his presence vide Exbt.2 seizure list and Exbt.2(1) is his signature.

11. During cross-examination, he stated that he cannot say the contents of Exbt.2.

12. PW2 Sri Jagabandhu Biswas in his deposition has deposed that he knows the informant of the case and the accused persons present in the court who were seen by him in the police station. He further stated that about 7/8 years back, one day afternoon, while he was in his shop, then the VDP Secretary Pratap Das came to him and asked him to go to the police station as some ganja were recovered at Hajalpara village. He further stated that the O/C informed the VDP Secretary about recovery of ganja and accordingly, he accompanied Pratap Das went to the police station and in the police station, he saw several packets of ganja lying. The weight of the ganja taken by a manual weighing instrument and at that time, he saw the accused person were kept in the lock up. He also stated that he saw that police drew some sample packet of ganja and the police seized the manual weighing instrument vide Exbt.1 and Exbt.1(1) is his signature. He also stated that the police seized the entire ganja packets vide Exbt.2 and Exbt.2(2) is his signature. He further stated that the police inquired him about the incident.

13. During cross-examination he stated that he cannot say who was the owner of the ganja packets and weighing instrument. He also stated that he cannot say the contents of Exbt.1 and Exbt.2 and he do not know the name of the accused persons.

14. PW3 Binod Bezbaruah is the informant of this case. He in his deposition has deposed that on 02.09.2011, while he was working as S.I at Goreswar P.S, then on that day O/C Goreswar P.S received an information to the effect that some persons from Udalguri side after

crossing the border of Baksa District used to sell ganja at Goreswar area. O/C Goreswar P.S lodged the GD Entry No.- 34 dated 02.09.2011 and directed him to enquire about the matter. Accordingly, he along with his staff and army from Dogra Regiment and CRPF personnel went to Hajalpara which is the border area of Baksa District bordering Udalguri District. He further deposed that while checking at Hajalpara area, he saw four persons were coming in motorcycle. They stopped the motorcycle and searched the bag of the occupants of the motorcycle. One motorcyclist fled away. He also deposed that on his enquiry, the occupants disclosed that they were carrying ganja in the bag. On searching the bags, he found ganja inside the bag. He brought a weighing instrument to measure the recovered ganja from local villagers. After taking weight, he found the total weight of the recovered ganja was 30 kg. He seized the said ganja vide Exbt.2 and Exbt.2(3) is his signature. He also seized the weighing instrument vide Exbt.1 and Exbt.1(3) is his signature. He also deposed that he drew three samples from the seized ganja consisting of 50 gm each and sealed the samples. He examined the witnesses and brought the accused along with the seized ganja to the police station. He also sent the samples of ganja for FSL examination. He received the FSL examination report which gave positive test for ganja. He filed the ejarah on 17.11.2011 against the accused and Goreswar P.S Case No. 112/11 was registered in this connection. Thereafter, he handed over the case diary to the O/C Goreswar P.S.

15. PW4 Gajendra Nath Deka, Forensic Expert, in his deposition has deposed that on 05.09.2011, while he was working as Deputy Director in the Drugs and Narcotics Division, DFS, Kahilipara, Guwahati, then on that day, he received a parcel through the Director, DFS, Assam in

connection with Goreswar No. 34 dated 02.09.2011 for examination. He further stated that the parcel consisted of two exhibits enclosed in a sealed envelope. The facsimile of the seal was found to be "ASHOK PILLAR". He also stated that the two sealed envelopes marked as Ex-A and Ex-B having two closed polythene packets each containing 50 g dry plant materials marked by him as DN-297/2011(a) and DN-297/2011(b).

16. PW4 after examining the samples both physically and chemically opined that the exhibits DN-297/2011(a) and DN-297/2011(b) gave positive tests for Cannabis (Ganja). He has confirmed that Exbt.3 is the FSL report and Exbg.3 is his signature. He has also confirmed that Exbt.4 is the forwarding report of Director Sri K.C Sarma by which his report was forwarded to SDPO, Tamulpur, Baksa and Exbt.4(1) is the signature of Sri K.C Sarma which he knows in his official capacity.

17. PW5 Inspector Numal Pait is the investigating Officer of the case. PW5 in his deposition has deposed that on 17.11.2011, he was posted at Goreswar P. S. as S. I. probationary. On that, S. I. Binod Bezbaruah lodged an FIR with the Officer-In-charge, Goreswar P. S. and the Officer-in-charge registered the same as Goreswar P. S. case No.112/11 and entrusted him for investigation. He further stated that ongoing through the FIR he found that S. I. Binod Bezbaruah during Naka Cheching at Hajalpara Barnadi Bridge, recovered 30 kg of ganja from accused Shri Rajsubram Lahiri, Nipen Das and Dilip Kalita and he after recovery of the seized ganja arrested the accused persons, forwarded thm to court and sent the sample to FSL for forensic examination. He also stated that S. I. Binod Bezbaruah recorded the statement of the witnesses, seized the ganja and he collected the FSL report. He further stated that he visited the place of occurrence, drew the sketch map of the place of occurrence



and after completion of investigation he submitted charge sheet against the accused Shri Rajsubram Lahiri, Nipen Das and Dilip Kalita u/s 20(b) of the NDPS Act. He proved the sketch map of the place of occurrence as exhibit-6 and exhibit-6(1) is his signature. He also proved the charge sheet as exhibit-7 and exhibit-7(1) is his signature. He also proved the extract copy of Goreswar P. S. GDE No.34 dated 02.09.2011 as exhibit-8 and exhibit-8(1) is his signature of the signature of Prasanta Bezbaruah, the then officer-in-charge of Goreswar P. S. and he know his signature in his official capacity.

18. During cross-examination PW5 stated that no inventory was prepared in presence of Magistrate and no sample was taken in presence of Magistrate. He also stated he has not seized the Malkhana register and he has not recorded the statement of the Malkhana In-charge as witness.

19. Learned Special PP forcefully submitted that when the accused persons were carrying 30 kgs of ganja, then they were caught red handed along with the ganja and this fact is proved by the prosecution witnesses and as such, the prosecution has able to prove the offence u/s 20(C) of the NDPS Act against the accused persons beyond reasonable doubt and this is a fit case to convict the accused persons.

20. On the contrary, learned advocate for the accused submitted that as per FIR, the informant apprehended the accused along with the ganja on 02.09.2011 and the informant lodged the FIR on 17.11.2011 i.e., after two and half months. But the informant in the FIR has not explained the reason of delay in lodging the FIR. Learned advocate further submitted that to prove this case, prosecution examined two seizure witnesses i.e.,

PW1 and PW2, but, PW1 and PW2 in their evidence stated that they were called to the police station and thereafter informant took their signatures on a paper but they did not know the contents of the seizure list. So, from the evidence of PW1 and PW2, it reveals that the informant has not seized the alleged ganja on the spot in presence of witnesses and as such, prosecution case is doubtful. Learned advocate further submitted that the informant has not prepared any inventory as per provision of Section 52-A of the NDPS Act and the informant did not produce the alleged ganja before the Magistrate and as such, the prosecution case is doubtful. Learned advocate further submitted that the informant also has not followed the provision of Section 42 of the NDPS Act i.e., after search and seizure, he has not informed the same to his immediate superior authority and as such, there is defect in search and seizure which casts doubt on the prosecution case. Learned advocate also submitted that the prosecution has miserably failed to prove that the informant i.e., PW3 recovered the alleged seized ganja from the possession of the accused persons and as such the accused persons are entitled to get clean acquittal.

21. The NDPS Act provides stringent punishment. It is settled law that the stringent punishment requires higher degree of proof of the offence. That is why, the NDPS Act provides some provision to be followed by the Investigating Officer during the investigation and failure to comply the provision would be fatal to the prosecution case and will vitiate the proceeding. In this regard, the Hon'ble Supreme Court in a judgment reported in ***State of Rajasthan Vs Jagraj Singh Alias Hasna reported in (2016) 11 SCC 687***, has held as follows:-

9. *The NDPS Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the*

*control and regulation of operations relating to narcotic drugs and psychotropic substances. This Court had occasion to consider the provisions of NDPS Act in large number of cases. This Court has noted that the object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. This Court in State of Punjab vs Balbir Singh, 1994 (3) SCC 299, in paragraph 15 has made the following observations:*

*"15. The object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. Therefore these provisions make it obligatory that such of those officers mentioned therein, on receiving an information, should reduce the same to writing and also record reasons for the belief while carrying out arrest or search as provided under the proviso to Section 42(1). To that extent they are mandatory. Consequently the failure to comply with these requirements thus affects the prosecution case and therefore vitiates the trial."*

22. From the ratio of the aforesaid decision of the Hon'ble Supreme Court it reveals that it is mandatory to follow the provision of the NDPS Act. From the evidence of PW1 and PW2 it reveals that at the time of re-

covery of the seized ganja they were not present. PW3 informant after recovery of the ganja brought the same to the police station and thereafter called PW1 and PW2 to the police station and seized the ganja. PW3 has not brought the seized ganja before the Magistrate for preparing inventory as per provision of Section 52-A of the NDPS Act.

23. From the evidence of PW3 it also reveals that he has not informed his superior officer after search and seizure and he was not authorized by his immediate superior officer for search and seizure. Moreover, PW3 lodged the FIR after two and half month of the incident. PW3 in the FIR has not explained the reason of delay in lodging the FIR. PW3 has not seized ganja at the place of occurrence. PW1 and PW2 had not supported the prosecution case regarding search and seizure. PW3 in his evidence stated that there were four persons but PW3 in the FIR stated that there were three person on two motor cycle.

24. Regarding search and seizure **Section 42 of the NDPS Act** provided as follows:-

"1.[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: Provided 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.]”

25. On going through the provision of Section 42(2) of the NDPS Act, it reveals that when an officer takes down any information in writing under (1) or records grounds for his belief under the provision thereto, he shall within 72 hours send a copy of thereof to his immediate official superior. From the evidence of PW3, it reveals that he conducted the Naka checking on the basis of Goreswar P.S GD entry but after taking down the information in writing, PW3 has not informed his immediate superior regarding the information within 72 hours and he has not sent the copy thereof to his immediate superior authority. PW3 has not properly seized the ganja in presence of witnesses at the place of occurrence. Hence, it appears that PW3 violated the provision of Section 42(2) of the NDPS Act.

26. The next question arise whether the PW3 seizing officer followed the procedure provided under Section 57 of the NDPS Act or not. Section 57 of the NDPS Act provided as follows:-

***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.***

27. On plain reading of Section 57 of the NDPS Act it reveals that when any person make 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. Here in this case PW3 in his evidence nowhere stated that he has submitted a report of all the particulars of arrest of the accused persons and regarding seizure from the accused persons to his immediate official superior authority. So, I find that the prosecution has failed to comply the provision of Section 57 of the NDPS Act.

28. From the discussion made above, I find that the prosecution has not followed the provision of section 42, 52A and 57 of the NDPS Act. Hence, in view of that I find that the proceeding of the case is vitiated for non-compliance of the mandatory provision of the NDPS Act. Moreover, there is no corroboration among the prosecution witnesses regarding search and seizure which also creates doubt on the prosecution case. Hence, I have nothing to hesitate to hold that prosecution failed to prove the charges against the accused persons beyond all reasonable doubt.

29. From the discussion made above, I have nothing to hesitate to hold that prosecution failed to bring home the charge against the accused persons beyond all reasonable doubt. Hence, accused Shri Rajsubram Lahiri, Nipen Das and Dilip Kalita are found not guilty u/s 20(c) of the NDPS Act and they are acquitted from the offence u/s 20(c) of the NDPS Act. The accused are set free at their liberty forthwith.

30. The bail bond furnished by the accused persons shall remain in force for another six months in the spirit of Section 437-A Cr.PC.

*Spl. NDPS Case No. 02/2018*

31. The seized ganja be destroyed in due course of time. The seized weighing machine be returned to its owner in due course of time.

32. Send a copy of the judgment and order to the District Magistrate, Baksa as per provision of section 365 of the Cr. P. C.

33. Judgment is declared and delivered in the open court under my hand and seal of this court on this **9<sup>th</sup>** day of December, **2022**.

Dictated and Corrected by me:

Special Judge,  
Baksa, Mushalpur

(N. U. Ahmed)  
Special Judge,  
Baksa, Mushalpur



**APPENDIX:**

**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW1	Pratap Das	Seizure witness
PW2	Jagabandhu Biswas	Seizure witness
PW3	Binod Bezbaruah	Informant
PW4	Gajendra Nath Deka	Forensic Expert
PW5	Inspector Numal Pait	Investigating Police Officer

**B. Defence witnesses:**

NIL

**C. Court witnesses:**

NIL

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution Exhibits:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exbt.1	Seizure list of weighing instrument
2.	Exbt.2	Seizure list of ganja
3.	Exbt.3	FIR
4.	Exbt.4	FSL report
5.	Exbt.5	Forwarding of FSL report
6.	Exbt.6	Sketch map
7.	Exbt.7	Charge-sheet
8.	Exbt.8	Extract copy of Goreswar P.S GDE No. 34

**B. Defence Exhibits:**

NIL

**C. Court Exhibits:**

NIL

**D. Material Objects:**

NIL

( N. U. Ahmed)  
Special Judge,  
Baksa, Mushalpur

