

**IN THE COURT OF SH. AJAY KUMAR JAIN : SPECIAL JUDGE NDPS:  
PATIALA HOUSE COURTS: NEW DELHI**

Case No. SC/323/18  
ID No. 02403R0026872018

**Narcotics Control Bureau**  
Delhi Zonal Unit, Government of India  
West Block No.1, Wing No.7,  
IInd floor, R.K. Puram, New Delhi

**Versus**

**Betty Rame (In JC)**  
D/o Farnando Rame  
R/o 8575, Glenwood Park,  
Harare, Zimbabwe.  
Presently lodged in Tihar jail, New Delhi.

Date of Institution : 28.09.2018  
Judgment reserved on : 17.08.2021  
Date of pronouncement : 25.08.2021

**JUDGMENT**

1. Prosecution story in brief is that IO Anand Kumar on receiving a secret information at around 730 hours on 02.04.2018 that one Zimbabwean lady dark complexioned departing to Goa by flight no. 6E-505 from Terminal 1D at around 2140 hours suspecting to carrying narcotic drug or psychotropic substance in her bag, reduced the same in writing and put it before Sh. V.V. Singh, superintendent who directed IO Sarita Kataria to constitute a team and take necessary action as per law. Accordingly, IO Sarita Kataria constituted a team consisting of herself, IO Anand Kumar, IO Rampal, Sepoy Yogesh Kumar, Sepoy Vishwendra and driver Babu Lal. Then, after collecting the required items used for search and seizure reached airport, IO Sarita Kataria at airport disclosed information to CISF personnel and requested them to become independent witnesses for search and seizure proceedings to which R.K. Mandal ASI/Exe. CISF and Ravi Kant ASI/Exe. CISF unit ASG of Delhi Airport, agreed to become independent witnesses.

2. At around 2030 hours, accused carrying two luggage bags entered the terminal building from entry gate no.5 then she was approached by the NCB team alongwith independent witness. IO Sarita Kataria asked her name and details, thereafter she revealed her name as Betty Rame, Zimbabwean national who is going to Goa via flight no. 6E-505 through Indigo airways. IO offered personal search of herself and the staff but she refused then notice u/s 50 was given to her and explained that she has a right to be searched before magistrate and gazetted officer to which she denied thereafter, she was asked to open the trolley suitcase mark Echolec gray colour which was thoroughly checked and found to contain some used clothes however after removing the clothes, the suitcase was still found abnormally heavier. Then, IO found false cavity on upper and lower side of the suitcase. On removing the plastic covers of false cavity, it was found to contain black colour polythene in each cavity. Thereafter, black colour polythene from both upper and lower were removed and cut opened which found to contain white crystalline substance and informed by accused Betty Rame as Methamphetamine. Then small quantity was taken from each packet which tested positive for Methamphetamine. The contraband recovered was having same colour and texture from both the polythene, then the entire crystalline substance was transferred in transparent polythene packet, and on weighing the total quantity came out to be 3 kg. Two samples of 5 gm each were drawn, search and seizure proceedings were conducted, panchnama was prepared, test memo in triplicate was prepared. The recovered substance, seized material, samples and documents i.e. passport, tickets were taken in possession by the IO. Accused in her statement u/s 67 NDPS Act voluntarily admitted guilt of drug trafficking for want of money. Thereafter she was arrested and jamatalashi was conducted. Report u/s 57 NDPS Act regarding seizure and arrest was made to superintendent.
3. As per CRCL report dated 18.04.2018, the sample was found to contain Methamphetamine. The mobile numbers 9821320913 and 9650683244 alleged to be of accomplices as told by accused Betty Rame found to be obtained on forged ID. The mobile Samsung having IMEI no. 356500072157349 recovered

from accused was sent to SIFS for examination, on extraction found from SIFS containing photo of Betty Rame and the bag concealing the drug. On completion of investigation, complaint was filed by IO Deepak Attri.

4. Vide order dated 16.11.2018 charges u/s 22(c) and 23(c) NDPS Act were framed against the accused to which she pleaded not guilty and claimed trial.
5. Prosecution for substantiating its case examined 12 witnesses. The summary details of prosecution witnesses are as under:
6. **PW6 IO Sarita Kataria** stated that on the instruction of V.V. Singh, Superintendent, she constituted the team and went to airport after collecting seal and making entry in seal movement register, joined R.K. Mandal and Ravikant of CISF for search and seizure proceedings, thereafter at around 2030 hours noticed one lady similar to identity entering from gate no.5, then she was approached who disclosed her name and travelling details, and showed her passport and tickets. Notice u/s 50 was given however she declined the presence of gazetted officer or magistrate for taking search. Nothing suspicious was found from her personal search however upon opening the bag, false cavity was noticed in lower and upper side. On opening the packets, each tested positive for Methamphetamine, thereafter, the entire contraband was mixed homogeneously and weighed around 3 kg. Two samples of 5 gm each were taken, sealing and seizure proceedings were conducted, panchnama was prepared. Arrested and prepared the personal search of accused, then prepared the seizure report u/s 57. In cross-examination stated that they left NCB office at around 7 PM and reached airport at around 07.40 PM. Accused was apprehended in the departure area near gate no.5, Departure Hall, IGI airport. She denied suggestion that she deliberately did not take the CCTV footage. She also denied suggestion that accused was already apprehended by CISF personnels and case property was already recovered. There was no tag attached with the bag because she was apprehended before check-in.
7. **PW9 IO Anand Kumar** stated that on 02.04.2018, he received a secret information that one lady Betty Rame aged around 36 years is departing to Goa at around 2140 hours suspected to carry narcotic drugs and psychotropic

substance. He produced the said information to superintendent V.V. Singh thereafter he joined raiding team and reached the airport where independent witnesses Ravi Kant and R.K. Mandal were joined. Notice u/s 50 was given to the accused. On search of the bag, from the cavities at lower and upper side of bag polythene packets were recovered containing Methamphetamine, seizure and sealing proceedings were conducted. In cross-examination stated that he had not received in photograph of the accused from the informer. The accused was intercepted inside the terminal building while she was entering from departure gate no.5. He did not know about the presence of CCTV and did not obtain the CCTV footage.

8. **PW10 IO Rampal** also accompanied the raiding team to the airport in whose presence, accused was apprehended and notice u/s 50 was given. He also deposed that on search of the bag from the false cavity, two polythene were recovered containing Methamphetamine, seizure and sealing proceedings were conducted. The accused was intercepted inside terminal building while entering from departure gate no.5.
9. **PW11 R.K. Mandal**, ASI CISF stated that at around 0940 hours, NCB officer gave information about Zimbabwean lady thereafter the said lady was noticed at departure are of terminal 1D. On screening her baggage, some doubtful image was noticed. Then NCB officials offered their personal search and notice u/s 50 was given. From the bag, some extra weight was noticed and two polythene were recovered from the false cavity, both at upper and lower part. On testing each polythene, positive test for Methamphetamine was found, and total substance weighed around 3 kg, samples were drawn, sealing and seizure proceedings were conducted. In cross-examination stated that no photography or video recording was conducted. He also denied suggestion that accused was not intercepted at airport or that no contraband was recovered from her possession.
10. **PW12 Ravi Kant Kumar** stated that on 02.04.2018 he was working as ASI in CISF at Random X-ray machine. At around 08.20 PM, ASI R.K. Mandal brought passenger Betty Rame for x-ray. The X-ray suggested some narcotic drug and this fact was told to NCB. Then, the inquiry was made from the said lady. The bag

was opened found to be containing Methamphetamine in upper and lower bottom, proceedings u/s 50 were also conducted. On putting leading questions by Ld. SPP, he stated that notice u/s 50 was given to the accused and panchnama was prepared, tickets were recovered. In cross-examination stated that only from X-ray image doubt can be created about the presence of any substance. He also stated that he has never been a witness in NCB case except the present one. The contraband was weighed in his presence. He also denied the suggestion that proceedings were conducted in NCB office. **PW5 IO Deepak Attri** wrote the letter to Nodal Officers as well as Assistant Director NCRB and filed complaint in court after completion of investigation.

11. **PW1 Dr. Anil N. Mahendrakar**, Assistant Chemical Examiner, CRCL analysed the sample under the supervision of Dr. T.C. Tanwar and a report dated 18.04.2018 was prepared by himself and Dr. T.C. Tanwar. **PW2 Ajay Kumar**, Nodal Officer, Bharti Airtel exhibited the CAF of mobile no. 9650683244 in the name of Dheeraj and 9821320913 in the name of Upender. **PW3 Dr. T.C. Tanwar** exhibited FSL report Ex.PW1/C. **PW4 Yogender Singh Yadav**, Sepoy NCB deposited the exhibits at CRCL. **PW7 V.V. Singh**, Superintendent stated that on 02.04.2018 IO Anand Kumar put the information before him and on the said information he directed IO Sarita Kataria to constitute a team and take action as per law. He issued seal to IO Sarita Kataria and made entries in seal movement register. He was also working as malkhana incharge and case property was deposited with him by IO Sarita Kataria and he forwarded the sample to CRCL through Sepoy Y.S. Yadav. IO Sarita Kataria and IO Anand Kumar submitted seizure and arrest report u/s 57 to him. **PW8 Dr. Ranjit Kumar Singh** Cyber Forensic Expert SIFS stated that he extracted the data from Samsung Galaxy mobile and furnished the report Ex.PW8/A. In cross-examination stated that it is correct that request letter from NCB is not on the record.

12. Accused in her statement u/s 313 Cr.PC denied all the incriminating circumstances put to her and stated that nothing was recovered from her and her signatures were taken on blank papers. She further stated that her mobile phone

was not examined.

**Material exhibits**

13. **Ex.PW6/A** is the secret information. **Ex.PW6/B** is the notice u/s 50 NDPS Act to the accused. **Ex.PW6/C** is the panchnama /seizure memo. **Ex.PW6/D1 to D3** is the air ticket of accused. **Ex.PW6/E** is the passport of the accused. **Ex.PW6/H** is the statement of accused u/s 67 NDPS Act. **Ex.PW6/G** is the statement u/s 67 NDPS Act of ASI R.K. Mandal. **Ex.PW10/B** is the statement of ASI Ravi Kant Kumar u/s 67 NDPS Act. **Ex.PW9/B** is the arrest memo. **Ex.PW6/I** is the jamatalashi. **Ex.PW6/L** is the seizure report u/s 57 NDPS Act. **Ex.PW7/C** is the arrest report u/s 57 NDSP Act. **Ex.PW1/C** is the CRCL report. **Ex.PW5/A** is the letter to Nodal Officer requiring CAF of mobile no. 9821320913 and 9650683244. **Ex.PW8/A** is the forensic examination report from Samsung Galaxy J1 mini mobile having IMEI slot 1 no. 356500072157349 and slot 2 no. 356500072157347. **Ex.PW6/A** is the seal movement register entry. **Ex.PW7/A** is the malkhana register entry.
14. Ld. Counsel for the accused submitted that the statement u/s 67 is taken under pressure, coercion and also not admissible in view of the recent judgment of Apex Court in case titled Toofan Singh Vs. State of Tamil Nadu CrI. Appeal No. 152/2013 dated 29.10.2020. Ld. Counsel submits that even otherwise, accused could not give the statement voluntarily as she was in custody and she was also not apprised of her right to remain silent before giving the statement u/s 67 NDPS Act. Ld. Counsel submits that there is a recovery of two packets allegedly of Methamphetamine however the samples were not taken from each packets but the two samples of 5 gm each were taken after mixing which a totally wrong manner of taking samples and on this ground, the accused were acquitted by Hon'ble High Court of Delhi in case titled Amani Fidel Chris vs. NCB 2020 (2) LRC 238 (Delhi). Ld. Counsel submits that there is no mention of word 'shall' in the notice u/s 50 NDPS Act which is essential. Neither the word 'nearest' gazetted officer or magistrate is mentioned, thus notice u/s 50 is defective (relied upon Rakesh @ Shankar Vs. State 2014 (1) JCC Narcotic 13). Ld. Counsel submits that the accused is falsely implicated in this case and has

nothing to do with the crime and the entire recovery is planted hence the accused is entitled to be acquitted from the case. Ld. Counsel besides oral submissions, also filed written submissions.

15.Ld. SPP submits that present accused is apprehended at the airport and on search of her bag, 03kg of Methamphetamine i.e. commercial quantity of drug is recovered. The accused was given notice u/s 50 NDPS Act for personal search however nothing was recovered from her personal search and recovery of contraband was found in her bag. Thus, even no requirement of notice u/s 50 NDPS Act. Ld. SPP submits that the testimony of PW6, PW9, PW10, PW11, PW12 regarding the manner of recovery remained unimpeached, therefore, there is presumption u/s 35 & 54 NDPS Act in favour of prosecution and accused unable to rebut the said presumption. Ld. SPP submits that minor omissions during investigation do not have any impact on the prosecution case. The prosecution able to prove the foundational fact beyond reasonable doubt however accused unable to rebut the presumption, hence, liable to be convicted for the offence charged.

*16. Arguments heard. Record perused.*

17. Apex court in "*Mohan Singh Vs. State of MP, AIR 1999 SC 883*", held that effort should be made to find the truth, this is the very object for which courts are created. One has to comprehend the totality of the facts and circumstances as spelled out through the evidence depending upon the facts of each case.

18. In appreciating the evidence, the approach of the court must be integrated and not truncated or isolated meaning thereby inferences should not be drawn by picking up an isolated statement from here and there; rather the evidence on a particular point should be examined in the background of the total statement of said witness or other witnesses as well as other evidence. The finding should be on the basis of objective assessment of the evidence and not on the conjunctures and surmises. In "*Dalbir Singh and Ors. Vs. State of Punjab, AIR 1987 SC 1328*", no hard and fast rule can be laid down about the appreciation of evidence and every case has to be judged on the basis of its own facts. While appreciating the evidence of the witness, the approach must be whether the evidence of a witness

read as a whole appears to have ring of truth. Once that impression is formed, it is undoubtedly, necessary for the court to scrutinize the evidence more particularly, keeping in view the deficiency, drawbacks and the infirmities pointed out in the evidence as a whole, and evaluate them to find out whether it is against the general tenor of evidence given by the witness as to render it unworthy of belief. In '*Bhagwan Tana Patil Vs. state of Maharashtra, AIR 1974 SC 21*', the apex court ordained that the function of the court is to disengage the truth from the falsehood and to accept what it finds the truth and rejects the rest. It is only where the truth and falsehood are inextricably mixed up, polluted beyond refinement down the core, the entire fabric of the narration given by a witness then the court might be justified in rejecting the same. This legal position was further elaborated in '*State of UP Vs. Shankar, AIR 1981 SC 897*', wherein the Apex court observed that mere fact that the witness has not told the truth in regard to a peripheral matter would not justify whole sole rejection of his evidence. In this country, it is rare to come across the testimony of a witness which does not have a fringe or an embroidery of untruth although his evidence may be true in the main. It is only where the testimony is tainted to the core, the falsehood and the truth being inextricably intertwined, that the court should discard the evidence. Therefore, the duty is cast over this court to dispassionately disengage the truth from the falsehood and accept the truth and reject the same. This court is not meant to reject the testimony of a witness on slightest deflection, however has a bounden duty to search the truth. Apex court in case titled "*Gangadhar Behera & Ors. Vs. State of Orissa (2002) 8 SCC 381*", held that the principle *falsus in uno falsus in omnibus* is not applicable in India and it is only a rule of caution. Even if major portion of the evidence is found to be deficient, *in case residue is sufficient* to prove the guilt of the accused. The conviction can be maintained. It is the duty of the court to separate the grain from chaff. Apex court in '*Smt. Shamim Vs. State, Crl. Appeal No. 56/2016 dated 19.09.2018*', in para 12 observed as under:

*“while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole*



*inspires confidence. Once that impression is formed. It is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof.....”.*

19. As far as the defective and illegal investigation is concerned, apex court held that if investigation is illegal or suspicious, the rest of the evidence must be scrutinized independent of faulty investigation otherwise criminal trial descend to the IO ruling the roost. Yet if the court is convinced that the evidence of eye witnesses is true, it is free to act upon such evidence though the role of the IO in the case is suspicious (*Abu Thakir, AIR 2010 SC 2119*). An accused cannot be acquitted on the sole ground of defective investigation; to do so would be playing into the hands of the IO whose investigation was defective by design. (*Dhanaj Singh Vs. State of Punjab AIR 2004 SC 1920*). Mere defective investigation cannot vitiate the trial (*Paramjit Singh Vs. state of Punjab AIR 2008 SC 441*). The lapses or the irregularities in the investigation could be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and evidence is of sterling quality. If the lapses or irregularities do not go the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored (*Sunil Kundu & Anr. Vs. State of*

*Jharkhand, 2013(4) SCC 422).*

20. To sum up, while appreciating evidence on record, the duty of the court is to separate credible and incredible part of evidence.

**Secret Information**

21. PW9 IO Anand Kumar stated that he had received secret information that accused Betty Rame aged around 36 years is departing to Goa from IGI Airport at around 2140 hours flight. That information Ex.PW6/A also corroborates his statement that accused is going to depart to Goa by flight at around 2140 hours on 02.04.2018. This fact is also corroborated by the statement of PW7 V.V. Singh, Superintendent. Thereafter, PW7 directed PW6 Sarita Kataria, IO to constitute a team and take action as per law. There is nothing in the cross-examination of the witnesses to suggest that the information in the manner relied upon is not received by PW9 or the constitution of the raiding team.

**Raid, Apprehension of accused and Recovery of contraband from the bag of the accused Betty Rame**

22. PW7 V.V. Singh, Superintendent, after receiving the information from PW9 IO Anand Kumar directed PW6 IO Sarita Kataria to constitute a team and thereafter she constituted the team consisting of PW9 IO Anand Kumar, PW10 IO Rampal, Sepoy Yogesh Kumar, Sepoy Vishwendra and Driver Babu Lal. Thereafter the team left the NCB office at around 07.00 PM and reached airport at around 07.40 PM. PW6 IO Sarita Kataria deposed that after the direction of PW12 V.V. Singh, the team was constituted, seal was collected from superintendent and relevant entry in seal movement register was made, and thereafter team left the office in government vehicle at around 07.00 pm and reached IGI Airport terminal 1D where disclosed the information and joined PW11 R.K. Mandal, ASI, CISF and PW12 Ravi Kant Kumar, ASI CISF as independent witnesses for search and seizure proceedings. There is nothing material in cross-examination to dispute the constitution of team, issuance of seal or the kit from the malkhana or joining of the independent witnesses in cross-examination by the accused.

23. As far as the apprehension of accused is concerned, PW6 deposed that at around 2030 hours, she noticed the present accused carrying two bags while entering in

the departure area from gate no.5. Thereafter she was disclosed her identity then the accused revealed her name, showed her passport and ticket and before taking search, she was also offered search of raiding team members and notice u/s 50 was given apprising her legal right to search before a gazetted officer or magistrate however she declined to be searched in presence of gazetted officer or magistrate but nothing suspicious was found from her personal search. The said part of statement is also duly corroborated with the testimony of PW9 IO Anand Kumar and PW10 IO Rampal. PW11 and PW12 also corroborated the said fact. Therefore as far as issuance of notice u/s 50 and refusal by the accused is concerned, there is nothing material to dispute the said fact from the prosecution case.

24. When nothing was recovered from the personal search of accused, PW6 IO Sarita Kataria asked the accused to open the bag carried by her containing false cavity in the upper and lower side of the bag. On search of cavity from both the places, two packets were recovered and each packet on cut opening found to contain white crystalline substance of same colour, property and texture. PW6 took the pinch of substance from each packets, found to give positive result for Methamphetamine. Thereafter, both the packets were homogeneously mixed found to be containing the weight of 3 kg. Then samples of 5 gm each were taken. Thereafter seizure and sealing proceedings were completed and panchnama was prepared. There is nothing in the testimony of PW6, PW9 or PW10 that no proceedings in such manner has taken place or that no contraband was recovered from the bag of the accused. The independent witness PW11 also stated that bag of accused was also checked through x-ray suspecting some doubtful image and this fact was also informed to NCB officers present thereafter which the proceedings of search were conducted and on search, false cavities were found in upper and lower portion of bag containing Methamphetamine. This fact was also corroborated by PW12 Ravi Kant, ASI CISF. There is nothing even in the testimony of independent witnesses that accused bag was not searched in the manner stated by PW6 or the contraband was not found concealed in the manner stated in the testimony of PW6, PW9 and PW10. Both

these witnesses also stated that total weight is 3 kg and samples of 5 gm each were taken. Both these witnesses also stated that they were the witnesses in NCB case for the first time. PW11 and PW12 are CISF officials found to be on duty in natural course. It cannot therefore be held that they are chance witnesses, furthermore there is nothing on record to doubt their natural presence at the place of search.

25. The presence of accused at the spot i.e. airport is also corroborated from the recovery of passport and the ticket of the accused from Delhi to Goa of 02.04.2018 thereafter, from Goa to Mumbai on 03.04.2018, then Mumbai to Bangkok on 04.04.2018 then Bangkok to Manila on 04.04.2018 thereafter, from Manila to Addis Ababa on 12.04.2018 and Addis Ababa to Johannesburg on 13.04.2018 (Ex.PW6/D1 to D3). The prosecution thus able to prove the apprehension of accused from the airport carrying the contraband in the bag and there is nothing in the cross-examination to doubt the prosecution story. Accused in her statement u/s 313 Cr.PC only baldly stated that public witnesses are planted and the case is false case. She is even not explaining what she was doing at the airport at that time and not even raised any defence that she was not picked up from airport but somewhere else. Once there is recovery of contraband from the accused then there is a presumption u/s 35 and 54 NDPS Act against the accused and onus upon accused to rebut the said presumption.

**Proceedings u/s 50 NDPS Act**

26. As discussed, there is no infirmity found in the procedure adopted in issuing notice u/s 50 NDPS Act and taking the personal search of accused however Ld. Counsel for accused submitted that the word 'nearest' and 'shall' is not mentioned in the notice u/s 50 NDPS Act therefore the said notice is invalid. The procedure u/s 50 is that the accused is to be apprised to be taken before the gazetted officer or magistrate and non mentioning of the words 'nearest' or 'shall' in the said notice is hardly of any relevance. There is categorical mention in the notice that '*as per your legal right, your search can be conducted before the gazetted officer or magistrate if you so desire*' however she declined. This notice was issued in presence of independent witnesses PW11 and PW12. There

appears to be no infirmity in the said notice even otherwise, there is no recovery from the personal search of accused hence, the notice u/s 50 is also not required. The judgment as relied upon also of no help in present case. As per prosecution case, the recovery of contraband is not from the bodily search of accused but from the bag carried by the accused. Apex court in case titled *Than Kunwar Vs. State of Haryana*, Crl. Appeal No. 2172/2011 dated 02.03.2020 in detail dealt with this aspect and held as under:

*17. No doubt we notice the judgment of this Court rendered by a Bench of three learned Judges in SK. Raju (supra). Therein, the Court referred to the judgment in Dilip (supra), and thereafter, went on to, inter alia, hold as follows:*

*“As soon as the search of the person take place the requirement of mandatory compliance with Section 50 is attracted irrespective of whether contraband is recovered from the person of the detainee or not.”*

*18. In the said case, the Court went on to hold that requirement of Section 50 was complied with. However, we notice a later development in the form of a judgment rendered by a Bench of three learned judges touching upon the correctness of the view expressed in Dilip (supra) as contained in paragraph 16 of the judgment.*

*19. In Baljinder Singh (supra), this Court elaborately considered the matter with reference to the applicability of Section 50 in a case where there is a personal search also.*

*20. This was the case where 7 bags of poppy husk each weighing 34 kg. were found from the vehicle. A personal search of the accused was undertaken after their arrest which did not lead to any recovery of contraband. The High Court found violation of Section 50 as the personal search of the accused was not conducted before the Magistrate/Gazetted Officer and set aside the conviction of the respondent. This Court, in Baljinder Singh (supra), went on to consider the law laid down by the Constitution Bench in Baldev Singh (supra) and, inter alia, held as follows:*

*“16. The conclusion (3) as recorded by the Constitution Bench in para 57 of its judgment in Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080] clearly states that the conviction may not be based “only” on the basis of possession of an illicit article recovered from personal search in violation of the requirements*

**under Section 50 of the Act, but if there be other evidence on record, such material can certainly be looked into.**

17. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

18. The decision of this Court in Dilip case [Dilip v. State of M.P., (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377] , however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. **In our view, the decision of this Court in the said judgment in Dilip case [Dilip v. State of M.P., (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377] is not correct and is opposed to the law laid down by this Court in Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] and other judgments.”**

21. Having regard to the judgment by the three-Judge Bench, which directly dealt with this issue, viz., the correctness of the view in Dilip (supra) reliance placed by the appellant on paragraph 16 may not be available. **As already noticed, we are not oblivious of the observation which has been made in the other three Judge Bench judgment of this Court in SK. Raju (supra), which it appears, was not brought to the notice to the Bench which decided the case later in Baljinder Singh (supra). We notice however that the later decision draws inspiration from the Constitution Bench decision in Baldev Singh (supra). We also notice that this is not a case where anything was recovered on the alleged personal search. The recovery was effected from the bag for which it is settled law that compliance with Section 50 of the Act is not required.**

Therefore, in view of mandate of this judgment even if there is non compliance of section 50 in taking the bodily search then the recovery from the bag carried by the accused do not become illegal. The recovery of contraband in present case

is from bag thus the compliance of section 50 NDPS Act is not required.

**Sampling**

27.Ld. Counsel for the accused submitted that in present case the samples were drawn after mixing both the packets recovered from the upper and lower cavity and this is not the proper procedure. The representative samples are required to be drawn from each packet in presence of the magistrate but that compliance was not done therefore, in view of the judgment of *Amani Fidel Chris* (supra)) the accused is entitled to be acquitted. However, Ld. SPP submits there are only two packets, one is in the upper cavity and other is in the lower cavity of bag having same colour and texture and each packet was tested separately before homogeneously mixing and found to give positive test for Methamphetamine which was also later confirmed by CRCL report and this procedure was found accord by the Supreme Court in case titled *Sumit Tomar Vs. State of Pubjab 2013(1) SCC 395*.

28.In present case, two packets of Methamphetamine were recovered from the upper and lower cavity of the bag of the accused and each packet was tested separately which gave positive result for Methamphetamine. The colour, texture and property of material from both the packets are same. After testing each packet, the contraband was mixed homogeneously and samples of 5 gm each were drawn. Therefore, it cannot be inferred that before mixing the NCB officials had not satisfied about the presence of Methamphetamine in each packet. This procedure has found the force of law from the judgment of *Sumit Tomar* (supra), thus no infirmity found in taking the samples.

**Statement of accused u/s 67 NDPS Act**

29.Accused Betty Rame in her statement u/s 67 disclosed that she is Zimbabwean national and she previously came to India from Johannesburg where she was doing the job of a maid and was asked whether she wants to earn money thereafter, she got a call from one Johnso and asked her to come to India also sent around 700 US \$ to her, and further arranged the visa, then she stayed at Vikaspuri Lodge and he also asked her that she will be given some work next time. She went back to her country, thereafter in the first week of March, 2018

he again called her. On 20.03.2018, she came to Mumbai and stayed there for around 3 days then came to Delhi, and she was made to stay at one lodge in Vikaspuri then thereafter again shifted to another lodge, and on 02.04.2018 some Indian person came to the lodge and gave her the trolley suitcase containing the drug and told her to take this drug to Manila. Then, he also gave her ticket from Delhi to Goa, from Goa to Mumbai and from Mumbai to Bangkok and Manila. She also had a talk to Johnso who directed her to go to airport by taxi. At the airport, she was apprehended. Though the confessional statement u/s 67, as per the recent judgment of Apex Court in case titled *Tofan Singh vs. State of Tamil Nadu Crl. Appeal No. 152/2013 dated 29.10.2020* held inadmissible. The said statement could be admissible only to the extent of recovery of any material, fact or documents in terms of section 27 Evidence Act. This statement cannot be used as a confessional statement however from this statement the factum of her arrival in India on different dates is also found corroborated from the seals of arrival departure and visas found on her passport Ex.PW6/E. The recovered tickets also corroborates that she was going to Manila from Delhi via Goa and other places.

30. This accused in her statement u/s 67 NDPS Act stated that girlfriend of Johnso is having mobile no. 9650683244 and mobile number of Johnso IK is 9821320913 and 27710675709. She further stated that she is having mobile number +263775603327 and Indian number she do not know, it is in her phone. Surprisingly, the NCB neither in the chargesheet nor in the personal search memo Ex.PW6/I by which her black colour samsung mobile was seized mentioned the mobile number of accused. This mobile, as per the prosecution case, is sent to SIFS for extraction of data. PW8 Dr. Ranjit Singh extracted the data showing the photograph of accused alongwith the opened bag. Neither in the report Ex.PW8/A of Cyber Forensic Expert, the mobile numbers of accused is mentioned. Only IMEI numbers are mentioned.

31. The prosecution even not tried to ascertain the mobile number of the accused from the mobile recovered from her, even otherwise only called the CAF details of mobile numbers 9650683244 and 9821320913 and not even the CDR of these



numbers stated to be of girlfriend of Johnso Ik and Johnso Ik. Therefore, prosecution unable to connect the present accused with the real syndicate who has used the accused in carrying the contraband from India to abroad.

32. The statement u/s 67 regarding the confession is inadmissible however could be used in terms of section 27, except the movement of accused in India which is corroborated through passport entries, the prosecution not even able to connect the accused with her recovered mobile or the accomplices namely Johnso Ik and his girlfriend stating to be using the Indian mobile numbers or the Indian who delivered the contraband. This is a material infirmity committed during investigation.

33. Ld. defence counsel also submitted that before recording the statement u/s 67, IO Anand Kumar issued notice u/s 67 to the accused but in the said notice, he has not mentioned that she has a right to remain silent therefore the said statement cannot be said to be voluntary however there is categorical mentioning in the statement u/s 67 that she had a right to remain silent and the said statement could be used against her. Therefore, this plea also do not appear to be material. Even otherwise, the confessional statement u/s 67 is not admissible in terms of recent judgment of Apex court in case titled as Toofan Singh (supra).

**CRCL Report (Ex.PW1/C)**

34. PW1/C is the CRCL report showing that sample A1 on checking gave positive result for Methamphetamine with content 72.2%. PW1 Dr. Anil N. Mahindrakar, Assistant chemical Examiner stated that he had analysed the sample in presence of PW3 T.C. Tanwar, Chemical Examiner. There is nothing material in cross-examination of PW1 and PW3 that the sample was tampered and not checked properly, therefore, prosecution able to prove that recovered contraband is Methamphetamine which is a prohibited psychotropic substance.

**Compliance of section 57 NDPS Act**

35. PW7 Superintendent V.V. Singh stated that that on 04.04.2018 PW6 IO Sarita Kataria filed seizure report u/s 57 and on the same day PW9 IO Anand Kumar also submitted the arrest report u/s 57 and this fact is corroborated by PW6 and

PW9. There is nothing in cross-examination to suggest that such compliance is not made. Therefore prosecution also able to prove the compliance of section 57 NDPS Act.

**Effect of discrepancies, omissions and lapses**

- 36.Ld. Defence counsel raised the plea that there is a material lacuna in the prosecution case over the fact that accused was apprehended from IGI Airport but IO has not collected the CCTV footage regarding the place of apprehension and search of accused, and this itself creates the doubt over the manner of search and apprehension of accused. In present case, the testimony of PW6, PW9 and PW10 NCB officials is found credible over the apprehension and the recovery of contraband from the bag of the accused which is also corroborated through the statement of independent witnesses PW11 and PW12 therefore, from this omission of non collection of CCTV footage, no adverse inference could be drawn against the prosecution. Accused also not able to state anything credible in her statement u/s 313 Cr.PC why she is falsely implicated in the present case. It is also not her case that she had not come to airport for going to Goa, and the bag and the documents recovered do not belong to her.
37. It is pertinent to notice that after apprehension and arrest, the personal search memo Ex.PW6/I of the accused Betty Rame was prepared showing seizure of one black colour Samsung mobile. The said Samsung mobile is a material piece of evidence connecting the accused with other accomplices who had conspired for supply of contraband as stated by accused in her statement u/s 67, however the personal search memo do not show the mobile number though the said mobile is having two SIMs which is clear from the photograph of the said mobile prepared at SIFS laboratory as shown in forensic examination report (Ex.PW8/A) (at page no.68 of present complaint/internal page no.3 of Ex.PW8/A).
38. It is also pertinent to notice that the mobile phone was also sent for forensic examination however there is no letter exhibited on record to show how the said mobile phone was sent for forensic examination. The report Ex.PW8/A on its internal page 3 only suggests that PW8 received the mobile for recovery of data from external storage. It is not understandable why the internal storage of the

said mobile was not checked.

39. It is also pertinent to notice that the CAF and CDR were called by PW5 IO Deepak Attri of mobile no. 9821320913 and 9650683244 of the girlfriend of Johnso Ik and Johnso Ik at whose instance the accused stated to have come to India however to connect both the mobile numbers with the accused, the prosecution not taken any step to know the mobile numbers used by accused from the SIMs recovered from the mobile of accused Betty Rame.
40. This material infirmity in the case of NCB creates definite doubt over the intent of NCB officials to trace the entire syndicate and the persons involved in the said crime. There are number of lodges mentioned in the present case where the accused stayed however, there is nothing in evidence or on record to show any steps taken through accused to identify the said places or to identify the other culprits of this case. PW5 IO Deepak Attri also summoned the CDR alongwith CAF of the mobile no. 9821320913 and 9650683244. As per certificate u/s 65B of Nodal Officer dated 19.06.2018 (at page 55 of the complaint) suggest that CDR was also retrieved however the PW5 IO Deepak Attri who presented the complaint before this court only placed the customer application form alongwith the ID cards which are of the fake persons and not CDRs. The CDR of these mobile phones are the material evidence because from these CDRs the entire connection of other conspirators, their locations and relationship and frequency of talks with present accused and other accomplices could be deciphered. This is material infirmity in the prosecution case however no benefit of these infirmities could be given to accused as the prosecution case remain unimpeached over the factum of recovery of contraband from the bag of accused at airport.
41. However, these lapses by NCB Investigating officers, do not appear to be mere negligence or error of judgment but appears to be a deliberate act of not investigating the matter bonafidely against other accomplices who are members of international syndicate. The drug trafficking of the present kind is a very serious offence particularly this drug Methamphetamine having market value of around Rs. 1 crore for 1 kg and in present case, the recovered drug is around 3 kg. It is bounden duty of this court not to ignore those lapses but to issue

directions to initiate appropriate disciplinary proceedings against the erring investigating officers (relied upon *Dyal Singh & Ors. Vs. State of Uttarranchal* *Crl. Appeal No. 529/2010 dated 03.08.2012 (SC)*, *Shahbuddin Vs. State of Assam* *Crl. Appeal No. 629/2010 dated 13.12.2012(SC)*). Hence, Director, NCB is directed to initiate requisite disciplinary inquiry against erring investigating officers in the present case.

**Presumption u/s 35 and 54 of NDPS Act**

42. It is settled law once the possession is established, the person who claims that it was not a conscious possession or have no knowledge of concealment has to establish it. Section 35 of the Act gives statutory recognition of this proposition because of the presumption available in law. Similar is the position in terms of section 54 where also presumption is also be drawn from the possession of illicit articles. It is for the accused to prove that he has no knowledge or not in conscious possession of contraband. Apex Court in *Mohan Lal Vs. State of Rajasthan* *Crl. Appeal No. 139 of 2010 dated 17.04.2015, (2015) 6SCC 222* dealt this aspect in detail and held as under:

*12. Coming to the context of Section 18 of the NDPS Act, it would have a reference to the concept of conscious possession. The legislature while enacting the said law was absolutely aware of the said element and that the word "possession" refers to a mental state as is noticeable from the language employed in Section 35 of the NDPS Act. The said provision reads as follows:-*

*"35. Presumption of culpable mental state. - (1) 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.*

*Explanation. - In this section "culpable mental state" includes intention, motive, knowledge, of a fact and belief in, or reason to believe, a fact.*

*(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a*

*preponderance of probability."*

*On a perusal of the aforesaid provision, it is plain as day that it includes knowledge of a fact. That apart, Section 35 raises a presumption as to knowledge and culpable mental state from the possession of illicit articles. The expression "possess or possessed" is often used in connection with statutory offences of being in possession of prohibited drugs and contraband substances. Conscious or mental state of possession is necessary and that is the reason for enacting Section 35 of the NDPS Act.*

*13. In Noor Aga v. State of Punjab and Anr.[17], the Court noted Section 35 of the NDPS Act which provides for presumption of culpable mental state and further noted that it also provides that the accused may prove that he had no such mental state with respect to the act charged as an offence under the prosecution. The Court also referred to Section 54 of the NDPS Act which places the burden to prove on the accused as regards possession of the contraband articles on account of the same satisfactorily. Dealing with the constitutional validity of Section 35 and 54 of the NDPS Act, the Court ruled thus:-*

*"The provisions of Section 35 of the Act as also Section 54 thereof, in view of the decisions of this Court, therefore, cannot be said to be ex facie unconstitutional. We would, however, keeping in view the principles noticed hereinbefore, examine the effect thereof vis--vis the question as to whether the prosecution has been able to discharge its burden hereinafter."*

*And thereafter proceeded to state that:-*

*"58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.*

*59. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband*

was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt."

14. In *Bhola Singh v. State of Punjab*[18], the Court, after referring to the pronouncement in *Noor Aga (supra)*, concurred with the observation that only after the prosecution has discharged the initial burden to prove the foundational facts, then only Section 35 would come into play. While dislodging the conviction, the Court stated:-

" .... it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lay on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond [pic]reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others."

15. Having noted the approach in the aforesaid two cases, we may take note of the decision in *Dharampal Singh v. State of Punja*[19], when the Court was referring to the expression "possession" in the context of Section 18 of the NDPS Act. In the said case opium was found in the dicky of the car when the appellant was driving himself and the contention was canvassed that the said act would not establish conscious possession. In support of the said submission, reliance was placed on *Avtar Singh v. State of Punjab*[20] and *Sorabkhan Gandhkhan Pathan v. State of Gujarat*[21]. The Court, repelling the argument, opined thus:-

"12. We do not find any substance in this submission of the learned counsel. The appellant *Dharampal Singh* was found driving the car whereas [pic]appellant *Major Singh* was travelling with him and from the dicky of the car 65 kg of opium was recovered. The vehicle driven by the appellant *Dharampal Singh* and occupied by the appellant *Major Singh* is

not a public transport vehicle. It is trite that to bring the offence within the mischief of Section 18 of the Act possession has to be conscious possession. The initial burden of proof of possession lies on the prosecution and once it is discharged legal burden would shift on the accused. Standard of proof expected from the prosecution is to prove possession beyond all reasonable doubt but what is required to prove innocence by the accused would be preponderance of probability. Once the plea of the accused is found probable, discharge of initial burden by the prosecution will not nail him with offence. Offences under the Act being more serious in nature higher degree of proof is required to convict an accused.

13. It needs no emphasis that the expression "possession" is not capable of precise and completely logical definition of universal application in the context of all the statutes. "Possession" is a polymorphous word and cannot be uniformly applied, it assumes different colour in different context. In the context of Section 18 of the Act once possession is established the accused, who claims that it was not a conscious possession has to establish it because it is within his special knowledge.

15. From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to satisfactorily account for the possession of opium.

16. Once possession is established the court can presume that the accused had culpable mental state and have committed the offence. In somewhat similar facts this Court had the occasion to consider this question in *Madan Lal v. State of H.P.*[22], wherein it has been held as follows: (SCC p. 472, paras 26-27)

"26. Once possession is established, 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. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has

*not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."*

*16. From the aforesaid exposition of law it is quite vivid that the term "**possession**" for the purpose of Section 18 of the NDPS Act could mean **physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.***

In view of the mandate of above judgment, section 35 raises a presumption as to the knowledge and culpable mental state from the possession of illicit articles. As discussed the prosecution case over the factum of recovery of bag containing contraband from the accused Betty Rame is duly proved. Now the burden is upon the accused to rebut that she was not in conscious possession. Apex court in *Baldev Singh Vs. State of Haryana (2015) 17 SCC 554* categorically held that once possession is proved then it is for the accused to establish that he was not in conscious possession of contraband. The prosecution able to prove the foundational facts of apprehension of accused with contraband beyond reasonable doubt however the accused Betty Rame unable to rebut the said presumption.

43. Apex Court in case titled *Sardul Singh Vs. State of Haryana in (2002) 8 SCC 372* observed that "There cannot be a prosecution case with a cast iron perfection in all respects and it is obligatory for the courts to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not



implicit proof. It has often been said that evidence of interested witnesses should be scrutinized more carefully to find out whether it has a ring of truth and if found acceptable and seem to inspire confidence, too, in the mind of the court, the same cannot be discarded totally merely on account of certain variations or infirmities pointed or even additions and embellishments noticed, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out proof beyond reasonable doubt". On cumulative appreciation of the evidence despite lapses, lacunae and discrepancies as discussed, the prosecution able to prove the foundational facts against accused beyond reasonable doubt.

44. On overall appreciation of the evidence on record, the prosecution able to prove that 3 kg of Methamphetamine (commercial quantity) found concealed in bag in possession of the accused, therefore, there is presumption under Section 35 and 54 NDPS Act of culpable mental state and conscious possession in favour of prosecution and accused utterly failed to rebut the same either through prosecution evidence or her own explanation. Thus accused found to have committed the offence of possession and export of commercial quantity of Methamphetamine, punishable u/s 22 (c) and 23 (c) NDPS Act. Prosecution able to prove its case beyond reasonable doubt. Hence, accused is found guilty for commission of offence under Section 22(c) and 23(c) NDPS Act. Accordingly, accused Betty Rame is convicted for offence under Section 22(c) and 23(c) NDPS Act. Accused Betty Rame be heard on sentence.

**Announced in the open court  
on this 25<sup>th</sup> day of August, 2021**

**(Ajay Kumar Jain)  
Special Judge NDPS  
Patiala House Courts  
New Delhi**