

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

Case No. SC/8645/16
ID No. 02403R0100752016

Narcotics Control Bureau
Through: Sh. Anand Kumar,
Intelligence Officer,
Narcotics Control Bureau, New Delhi

Versus

Vikas Yadav
S/o Sh. Vijay Vir Singh Yadav
R/o E-51, Gali No. 17-A,
Sadh Nagar Chowk,
Palam Colony, New Delhi

Date of Institution : 05.04.2016
Judgment reserved on : 23.11.2019
Date of pronouncement : 29.11.2019

JUDGMENT

1. Prosecution case in brief is that on 30.10.2015, a secret information regarding lying of one parcel at DHL Express office, Rama Road, Kirti Nagar suspected to contain narcotic drug or psychotropic substance received by IO Anand Kumar. The said information was reduced in writing and put up before Superintendent R.S. Joshi who directed IO Manmohan Jakhmola to constitute team and take necessary action as per law. IO Manmohan Jakhmola constituted a team consisting of himself, IO Anand Kumar, Driver R.S. Yadav and left NCB office at around 03.05 PM in government vehicle with necessary seal and other items like IO kit, DD kit and weighing machine and reached the said office on 03.40 PM where IO met Virender Singh, Security officer who was apprised the purpose of the visit, and thereafter he identified the suspected parcel destined to UK. Then provided independent witness Akash Rathore, employee of DHL in whose presence the parcel was opened and found to contain one printer toner of computer. On checking the printer toner, it was found to contain one black colour plastic packet. The NCB

team was not able to pull out the black colour plastic packet, hence the plastic part of computer printer was broke open and black colour plastic packet was removed. On opening the black colour plastic packet, two plastic polythene were found containing white colour powdery substance. The mouth of the plastic polythene were tied with rubber band. After taking small quantity from each polythene, the substance gave positive result for ketamine. As the substance recovered from both the polythene had the same colour, texture, character and gave positive result for ketamine, both were homogeneously mixed and transferred into a transparent polythene packet and the total weight came around 490 gm. Samples of 5 gm each were drawn. Thereafter the entire material was packed and sealed, panchnama was prepared. The test memo in triplicate was prepared at the spot. All the documents i.e. invoice proforma and photocopy of I card used for booking was taken into possession. All the proceedings were concealed till 08.00 PM.

2. The statement of Akash Rathore, independent witness u/s 67 was recorded on 02.11.2015. Entire case property was deposited in malkhana, seizure report u/s 57 submitted by IO on 02.11.2015 with the Superintendent. The sample mark A1 with test memo alongwith forwarding letter on 02.11.2015 sent to chemical examiner, CFSL, CBI by Superintendent R.S. Joshi through Sepoy Digamber Singh which was received by Mithilesh Jha, case assistant CFSL, CBI. Virender Singh vide letter dated 14.11.2015 informed that the said parcel was booked through Times Express Service under the account of International Express, authorized dealer of DHL. Thereafter the letter was issued to Times Express who informed that the said parcel was booked by Praveen, manager, Galaxy Courier with courier bill no. 1807 dated 20.10.2015 with the ID of Rakesh Kumar. Praveen Ramavat replied to the letter dated 20.11.2015 issued by IO Anand Kumar that the said parcel was booked by Vikas Yadav on 29.10.2015 having mobile no. 8447445424 who was running Eagle Courier and Cargo Company, and came alongwith his friend Pammi to the office of Galaxy Courier Pvt. Ltd. and Vikas Yadav is residing at E-51, Gali No. 17A, Saad Nagar.

3. Thereafter notice u/s 67 was issued to Vikas Yadav on 26.11.2015 received by him on 27.11.2015 who appeared on 30.11.2015 and his voluntary statement was recorded. He disclosed that he booked the parcel on the identity of Rakesh Kumar on the instance of one Amit Pal r/o Najafgarh having mobile no. 8882856466 but he denied knowing the exact address of Amit Pal, he also stated that he knew Amit Pal through Kapil Dhawan of K.D. Courier.

4. The ID of Rakesh Kumar given by Vikas Yadav was found forged one. The mobile no. 8882856466 alleged to be of Amit Pal was found switched off and as per CAF issued in the name of one Bailash Chaudhary but the address was found incomplete and Bilash Chaudhary was also not available. The CDR from 01.04.2015 to 02.11.2015 was analysed and during CDR analysis it came to know that tower location of this number found at Saad Nagar where Vikas Yadav is residing and Madhu Vihar where Pammi is residing, Mahavir Enclave, Dwarka, Uttam Nagar but during this period no tower location of Najafgarh was found which creates suspicion that either this number was used by Vikas Yadav or his close associate. Praveen Ramavat in his statement u/s 67 disclosed that accused Vikas Yadav alongwith his friend Touhir Ahmed @ Pammi came for booking the said parcel on the ID of Rakesh.

5. The mobile no. 9711447727 provided by Vikas Yadav during recording of statement was issued to one Girish Sharma and Vikas Yadav was using the said number without the consent of Girish Sharma. Girish Sharma disclosed that earlier he was employee of Vikas Yadav. Girish Sharma also stated that he received a notice from DRI informing that some white powdery substance suspected to contain ketamine has been recovered from the premises H-32, Industrial Area, Bhiwadi, Rajasthan belonging to accused Vikas Yadav. The CDR of mobile no. 9711447727 revealed locations of Punjab, UP, Manesar, Bhiwadi, Rajasthan. The location of mobile on 29.10.2015 during day time was of Bhiwadi and in the evening when the parcel is booked is of Delhi. The call to UK on different numbers was also made from this number.

6. The information in this regard was reduced in writing and the Superintendent directed to continue the surveillance thereafter IO Anand Kumar submitted the surveillance report. Rajeev Sehrawat, IO contacted Deepak Jangid of K.D. Overseas who stated that Amit Pal and Kapil Dhawan never worked with him at K.D. Overseas. Touhir Ahmed @ Pammi in his statement u/s 67 disclosed that Vikas Yadav called him informing that he had to book a parcel to UK containing clothes, and Vikas Yadav taken him for booking the said parcel as Praveen who is running Galaxy courier is friend of him, but Vikas Yadav is not well known to Praveen. Accused Vikas Yadav was arrested on 23.12.2015 by DRI, then he had gone to Alwar Jail alongwith his father, wife and brother on 29.11.2015 where Vikas Yadav informed him that he was arrested in drug case.

7. On inquiry from DRI, a reply dated 05.02.2016 received stating they had recovered 64.254 kg finished product, 11.830 kg intermediary products and huge quantity of raw material and plant, machinery and products used for clandestine manufacturing of products, and as per CRCL report, seized finished product as well as intermediary product weighing total 76.05 kg is ketamine hydrochloride. Therefore accused Vikas Yadav was arrested on 24.12.2015.

8. Accused Vikas Yadav was thereafter interrogated at Alwar Jail in presence of Amar Singh, Jailer in which he disclosed that he established a factory at Bhiwadi on the instructions of one John r/o of UK for preparation of ketamine. IO Pradeep Singh tried to contact Amit Pal but failed to find him. Accused thereafter was arrested on 17.02.2016 in presence of Jailer, Alwar. The statement of Girish Sharma was recorded on 24.02.2016 and on 24.02.2016 report from CFSL also received confirming test for ketamine. On production warrants accused Vikas Yadav was produced from District Jail, Alwar on 15.03.2016. Two cases were found to have been registered against accused Vikas Yadav in FIR no. 1907/12 u/s 506/336/34 IPC and FIR no. 219/11 u/s 420 IPC PS Palam. Mobile no. 9711447727 was found to be issued to Girish Sharma, however same was used by Vikas Yadav after obtaining the ID of Girish Sharma without his consent. On 29.10.2015 the day on which the parcel was booked, the location of the said

mobile was in Bhiwadi during day time however in the evening time this mobile location is at Delhi. From this mobile, number of calls were made at UK between April to November, even on 27.08.2015 and 02.12.2015. On analysis of mobile no. 8882856466 it was found to be issued to some Bilash Chaudhary and the tower location of the said number found to be at Saad Nagar between 01.04.2015 to 02.11.2015 where Vikas Yadav was residing, Madhu Vihar where Pammi was residing and Mahavir Enclave, Dwarka and Uttam Nagar but during all of this period no tower location at Najafgarh which creates suspicion that either this number was used by Vikas Yadav or his close associates. Mobile no. 8447445424 is found to be in the name of Minakshi Kapoor, w/o Vikas Yadav. On completion of investigation, complaint was filed.

9. Vide order dated 16.05.2016 charges u/s 22(b) r/w section 28 NDPS Act and 471 IPC were framed against the accused to which accused pleaded not guilty and claimed trial.

10. Prosecution for substantiating its case examined 10 witnesses. The summary details of their depositions are as follows:

11. **PW1 IO Anand Kumar** deposed that on 30.10.2015 at around 02.10 PM, he received an information from DHL that one parcel received by them destined to UK suspected to contain some narcotics and psychotropic substances. Thereafter information was reduced into writing and put up before Superintendent R.S. Joshi. Thereafter, he was informed by Manmohan Jakhmola that he had to accompany him to DHL then he alongwith MM Jakhmola, driver R.S. Yadav reached DHL office at 03.40 PM. The manager Security, Virender asked the staff to bring the parcel, then the said parcel was opened in presence of Akash Rathore, independent witness found containing a toner and a small piece of black color polythene found visible from the upper portion of the said toner. Then the upper portion of said toner was broke open and black colour polythene was recovered found containing two polythene pouches mouth of which was tied with rubber band containing white powder which on testing found ketamine. Two samples of 5 gm each were taken thereafter the seizing and sealing proceedings were completed, panchnama was

prepared. Vide letter dated 14.11.2015 DHL informed that the said parcel was booked through the Times Express, thereafter the Times Express informed that it was booked by Galaxy Courier. The Galaxy courier informed that it was booked by accused Vikas Yadav who came alongwith is friend Pammi. Accused Vikas Yadav appeared on 30.11.2015 thereafter his statement u/s 67 was recorded. The statement of Parveen Ramavat and Touhir Ahmed were also recorded. No movement of Kapil Dhawan in K.D. courier was found in Bhiwadi side. Later on he came to know that accused was arrested by DRI then on production warrants, he was arrested. On 18.02.2016 he submitted arrest report u/s 57. In Cross-examination stated he came across some documents in the name of International Express at the time of preparation of panchnama however he did not conduct any inquiry from International Express. Vol. As far as he recollect there was tie up between Times Express and International Express. The consignee was Manjit Singh and consignor was Rakesh Kumar. He further states that whatever documents seized and taken into possession by M.M. Jakhmola were part of panchnama and handed over to him when the investigation of the case was handed over to him. Ex.PW1/DA was seized from DHL office showing reference to the present airway bill but stating 'containing decorative glass items'. Ex.PW1/DB is the original of said document on the letterhead of International Express. He has not issued any summons u/s 67 and Times Express official told him that they were using the account of International Express. He only conducted verbal inquiries from Times Express. He further stated that he do not know the name of official who received and booked the parcel. He further stated the number of airway bill, consignor and consignee details were not disclosed in the said information. He further stated that Virender Singh was present when the panchnama proceedings were conducted however did not sign the panchnama as not part of the team. He further stated that he did not go through the contents of panchnama at at the spot and did not sign the panchnama. He further stated that he cannot tell who had written the details on the back page of page no. 27. He further stated that he had not collected any document of dealing between International Express and Times Express. He further

submitted that invoice mark A is submitted by Vikas of Times Express. The same invoice is mark B but he cannot tell that one is photocopy of the other. He further stated that he asked accused u/s 67 statement whether he had knowledge about the contents of the parcel, or not but not, put any specific question whether the parcel in question was containing some psychotropic substances. He further stated that statement of Vikas Yadav Ex.PW1/N was recorded in Alwar Jail in presence of the Jailer.

12. **PW8 Manmohan Jakhmola** was directed by the Superintendent R.S. Joshi to constitute the team. He alongwith the team reached DHL office, met security manager Virender Singh. Thereafter in presence of one employee Akash Rathore the said parcel was opened found to be containing the contraband Ketamine. He prepared the panchnama and conducted other proceedings, deposited the case property with malkhana, returned the seal to R.S. Joshi, recorded the statement of Akash Rathore u/s 67 thereafter submitted the seizure report to R.S. Joshi. In cross-examination stated that on inquiry Virender Kumar, Security Officer told him that parcel in question was received from International Express Courier. The invoice in the name of International Express courier as well as the undertaking was also seized alongwith one proforma invoice of DHL. He however stated that weight of the parcel mentioned as 8 kg in the document of International Express and sender name as Ramesh Kumar and the said document showing that the parcel contains decorative glass items. In proforma invoice the parcel showing HP laserjet print cartridge. The contents as mentioned in Ex.PW1/DB and proforma invoice mark B was different. The invoice number is same on both. However he had not enquired about the declaration whether it is right or not. He also could not state who had made writing on the back side of Ex.PW8/B however the said writing did not belong to him. As per airway bill no. Ex.PW8/B the weight of parcel is 5.1 kg but as per Ex.PW1/DB 8 KG/5 KG. He further stated he cannot tell by whom the parcel in question was initially received. He further stated he cannot tell whether the lac seal of NCB at point C is affixed at spot or not.

13. **PW10 Akash Rathore**, Security Supervisor who associated with NCB team while opening of the parcel. **PW9 Praveen Ramavat**, Operational Manager of Galaxy Courier stating that the parcel been given to him by Rakesh, however after being declared hostile stated that letter Ex.PW1/G bears his signature showing that parcel is given to him by Vikas Yadav. He stated that he knows Vikas Yadav but do not have any close relations and he never visited his office prior to this incident. He admitted that his statement u/s 67 Ex.PW8/E is in his own handwriting but denied suggestion that it was voluntary. In cross-examination stated that the said statement Ex.PW8/E was written on the dictate of NCB officials. **PW7 R.S. Joshi** Superintendent who directed IO Manmohan Jakhmola to constitute team and take action as per law. **PW5 Touhir Ahmed** stated that accused Vikas Yadav and Praveen of Galaxy Courier are his childhood friends but he did not know anything about the booking of any parcel and he had given his statement in writing to IO Anand Kumar however his statement is false statement. After being declared hostile, he stated that it is correct that he introduced Vikas Yadav to Praveen but denied suggestion that he had gone to the office of Praveen to deliver the parcel alongwith accused Vikas Yadav. In cross-examination stated that before recording of his statement NCB officials told him that the said parcel was booked by Vikas Yadav with his help but he denied. He further stated that it is correct that he wrote the statement under pressure. **PW4 Girish Sharma** stated that the mobile number 9711___ was in his name when he was working with Vikas Yadav however given the same to Vikas Yadav after obtaining the micro sim. In 2015 he got disconnected the said phone. In cross-examination denied suggestion that said mobile was not used by Vikas Yadav. **PW3 V.B. Ramtek** senior scientific officer exhibited the CFSL report and stated that the sample on testing gave positive test for presence of Ketamine. **PW2 Yogesh Tripathi** alternate Nodal Officer, Reliance exhibited the details of mobile no. 8882856466. **PW6 Saurabh Aggarwal** exhibited record of mobile no. 8447445424 and 9711447727.

14. Accused in his statement u/s 313 Cr.PC denied all the incriminating circumstances put to him and stated he was called in the NCB office and during

that period they noted his family history and asked him to write his statement with the promise that if he writes his statement then he will be allowed to go thereafter he wrote the dictated statement. He also stated that he had not booked any courier consignment and no contraband was recovered from him or at his instance.

Material exhibits-

15. **Ex.PW1/A** is secret information. **Ex.PW8/A** is the panchnama. **Ex.PW8/B (Colly-8 pages)** are the other documents i.e. airway bill, certificate of International Express, copy of election card, PAN card and invoices. **Ex.PW10/A** is the statement of Akash Rathore u/s 67. **Ex.PW7/DA** is the test memo with lac seal of NCB. **Ex.PW7/B** is the seizure report u/s 57. **Ex.PW1/C** is the letter dated 14.11.2015 of Virender Singh stating therein the parcel was booked through Times Express. **Ex.PW1/E** is the letter dated 20.11.2015 of Times Express. **Mark DX** is the Galaxy Courier bill. **Mark A** is invoice. **Ex.PW1/G** is the letter dated 20.11.2015 of Praveen Ramavat. **Ex.PW1/I** is the statement dated 30.11.2015 of accused Vikas Yadav u/s 67. **Ex.PW8/E** is the statement u/s 67 dated 07.12.2015 of Praveen. **Ex.PW1/K1** is the surveillance request. **Ex.PW5/A** is the statement u/s 67 dated 14.01.2016 of Touhir Ahmad @ Pammy. **Ex.PW1/M** is the order dated 17.02.2016 of District and Sessions Judge, Alwar allowing interrogation of the accused. **Ex.PW1/O** is the arrest memo of accused dated 17.02.2016 in presence of Jail Superintendent. **Ex.PW1/N** is the statement of accused recorded in jail. **Ex.PW1/Q** is the letter written by IO Anand Kumar to Assistant Electoral Registration Officer for verification of voter ID card of Rakesh. **Ex.PW1/R** is the verification report of voter ID Card of Rakesh Kumar from Assistant Electoral Registration Officer AC-37 (Palam) stating therein no such record exists. **Ex.PW1/P** is the arrest report u/s 57. **Ex.PW3/A** is the CFSL report showing sample gave positive test for the presence of Ketamine. **Ex.PW1/U** is the letter of nodal officer attaching the details of mobile no. 8447445424 and 9711447727. **Ex.PW2/A** is the CAF of mobile no. 8882856466 in the name of one Bilash Chaudhary. **Ex.PW2/B** is the CDR details. **Ex.PW1/Z** is the letter regarding criminal case record of the accused. **Ex.PW7/F** is the letter dated 05.02.2016 of DRI stating that the accused is already apprehended

in Alwar. **Ex.PW1/X** is the statement of Girish Sharma u/s 67. **Ex.PW7/A** is the copy of seal movement register.

16. Ld. counsel for the accused submitted that present accused is falsely implicated and as per prosecution case also, the said consignment is not in the name of Vikas Yadav but of one Rakesh Kumar and prosecution unable to connect the said Rakesh Kumar with the present accused. The principal witness PW8 Praveen Ramawat and PW5 Tauhir Ahmed not supported the prosecution case and further stated that the statement u/s 67 was not voluntary. Ld. Counsel submits that the statement of accused u/s 67 recorded on 30.11.2015 was exculpatory in nature and no questions were put to him that consignment was booked by him in the name of Rakesh Kumar and recovery of 490 gm of ketamine from the said parcel. Ld. Counsel submits that the said statement also recorded under coercion as the accused was threatened if he will not write the statement he will not be allowed to leave the NCB office. Ld. Counsel submits that the relevant witnesses of Times Express, International Express and DHL Express through which the said parcel travelled are not examined. Furthermore, **Ex.PW1/DA** and **PW1/DB** seized suggesting the name of the consignor as Ramesh Kumar and the weight around 8 kg and furthermore the declaratory items are decorative glass items, therefore prosecution not able to prove that the parcel in question is not tampered. Ld. Counsel submits that on the back side of page no. 27 of the complaint (**Ex.PW8/B** (colly)) there are mention of some mobile numbers however IO Anand Kumar (**PW1**) and **PW8** IO M.M. Jakhmola unable to explain. Ld. Counsel submits that prosecution unable to prove the foundational facts beyond doubt, therefore the presumption u/s 35 and 54 cannot be invoked against the accused. Ld. Counsel submits that prosecution is unable to prove beyond reasonable doubt therefore accused is entitled to be acquitted. Besides oral submissions written submissions are also filed on behalf of accused.

17. Ld. SPP for NCB submits that the present accused has booked the parcel concealing contraband ketamine on the fake ID of one Rakesh Kumar. The factum of booking is duly proved from the testimony of **PW5** and **PW9** despite their non

supporting of prosecution case completely. Ld. SPP submits that accused in his statement u/s 67 also disclosed about the booking of the said parcel however took time to locate one Amit Pal who is found a fictitious person. Ld. SPP submits that after due investigation, accused was apprehended. The prosecution has to prove that parcel containing contraband was booked by present accused. The prosecution able to prove the said fact. Furthermore, from the testimony of independent witnesses Akash Rathore and IO, it is clear that parcel was found concealing the contraband. There is nothing in cross-examination of these witnesses that the said contraband was not recovered from the parcel. Ld. SPP submits that prosecution able to prove the foundational facts beyond doubt therefore presumption arose in favour of prosecution u/s 35 and 54 of NDPS Act however accused unable to rebut the said presumption.

18. Arguments heard. Record perused.

19. 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.

20. In appreciating the evidence, the approach of the court must be integrated and not truncated or isolated meaning thereby inferences should not 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

“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.....”.

21. 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*).

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

23. The brief sequence of facts is that on 29.10.2015 accused alongwith his friend Pammi @ Touhir Ahmed has booked the parcel in question with Praveen of

Galaxy courier on the ID of Rakesh Kumar. Praveen sent the same to the Times Express courier and Times Express courier under the authorized dealer International Express sent to DHL. On secret information dated 30.10.2015 a raiding party was prepared which reached at DHL office and in presence of independent witness the parcel was opened found to be containing the contraband. Alongwith the said parcel IO also seized the airway bill, certificate of deterioration original as well as photocopy on letterhead of International Express. Election ID card of Rakesh Kumar, PAN card of Rakesh Kumar and invoice.

Recovery of parcel containing contraband

24. On secret information Ex.PW1/A the team was constituted headed by PW8 IO Manmohan Jakhmola which reached the DHL office and found security manager who produced the parcel and in presence of PW10 Akash Rathore security supervisor of DHL the said parcel was opened. PW10 in his testimony stated that on 30.10.2015 his seniors called and asked to join the search, and when he reached one parcel was lying and that was opened by NCB team in his presence containing cardboard box, and on opening cardboard box one printer cartridge was found, and when it was opened found to contain two polythene bags. The polythene bags were opened by NCB team and both containing white powder which on testing was found to be 'ketamine' then samples were prepared and total weight found to be 400-500 gm. This witness also stated the panchnama was prepared and documents i.e. airway bill, invoice and other documents were taken into possession. This witness was also confronted in cross-examination with Ex.PW1/DA and PW1/DB which were recovered at that time, and from the testimony of this witness it is clear that these were the documents recovered with the parcel. This witness in cross-examination remained unimpeached over the manner of conducting of proceedings and recovery of contraband on opening the parcel i.e. the printer cartridge. The testimony of this independent witness is duly supporting the testimony of IO PW8 and PW1, therefore prosecution able to prove that the said parcel containing the psychotropic substance 'ketamine'. The said fact is confirmed through CFSL report exhibited by PW3 V. B. Ramtek, Senior Scientific Officer.

25. The prosecution also proved the formalities associated u/s 57 regarding reporting of recovery and arrest of accused in time. Now the prosecution has to prove that the said parcel was booked by the accused.

Parcel booked by the accused Vikas Yadav

26. After recovery of the parcel on the basis of airway bill number and ID, it was found that it was booked by Rakesh Kumar. DHL official vide letter dated 14.11.2015 (Ex.PW1/C) informed IO Anand Kumar that this shipment booked through Times Express under the account of International Express who is whole seller of DHL Express thereafter vide letter dated 20.11.2015 Ex.PW1/E one Vikas Saluja of Times Express, wrote a letter to Anand Kumar that this consignment was booked by M/s Galaxy Courier enclosing alongwith the customer courier bill and invoice. The invoice received from the galaxy courier is the same invoice which is seized with the parcel however having an additional feature of mentioning of mobile number which is found to be belonging to accused as is in the name of wife of accused. On the same day vide letter dated 20.11.2015 Praveen Ramavat of Galaxy courier informed IO Anand Kumar that this parcel was booked by vikas Yadav on the ID of Rakesh Kumar. Thereafter the notice u/s 67 dated 26.11.2015 (Ex.PW1/H) was issued to Vikas Yadav who appeared before the IO Anand Kumar and stated in statement u/s 67 NDPS Act (Ex.PW1/I) that he had booked the carton Hp Laserjet print cartridge in the name of Rakesh Kumar with Praveen and alongwith parcel he has given ID of Rakesh Kumar, PAN card and the said parcel was given to him by one Amit Pal. He has also provided the mobile number of Amit Pal. He further disclosed that he had worked for Amit Pal only once, furthermore the articles require no objection certificate being in the category of dangerous goods. He also disclosed that Amit Pal told that in that parcel there are some tablets also (kuchh goliyan hain) and the certificate is to be issued by the last company. He also disclosed he cannot tell the exact address of Amit Pal, however will come again for sending parcel when he will catch hold of him. He stated that he had taken the said parcel in company account however as unable to give export service therefore booked through Praveen of Galaxy courier.

27. Accused in his statement Ex.PW1/I categorically disclosed that he had booked the said parcel through Galaxy courier of one Amit Pal on ID of Rakesh Kumar and he also disclosed the mobile number of Amit Pal however the said mobile number is found in the name of one Bilash Chaudhary whose address found incomplete. Amit Pal also could not be located. The said Amit Pal is told to be related to one K.D. Overseas however on inquiry from K.D. Overseas no person in the name of Amit Pal or Kapil Dhawan is reported to be working in the said company. This accused in this statement also disclosed about what is contained in the said parcel including some tablets and also disclosed that this parcel falls in the category of dangerous goods, therefore no objection is required from the last company.

28. Consequent to this statement, Praveen Ramavat was summoned vide notice dated 02.12.2015 Ex.PW1/J, who disclosed in his statement u/s 67 NDPS Act that accused Vikas Yadav having office in the name of Eagle Courier and Cargo company (Mobile no. 8447445424) came with his friend Pammi @ Touhir Ahmad and booked the parcel however he has provided no document except parcel thereafter he sent the said parcel to Times Express. He also disclosed that the accused told him that the said parcel contains hp printer cartridge which is to be sent to UK. He also disclosed that they used to give their parcel to DHL and Fedex through Times Express. He disclosed that he had not given the Non Responsible Certificate, thereafter a notice was issued to Touhir Ahmed on 11.01.2016 who appeared, and in his statement u/s 67 (Ex.PW5/A) stated that they have booked the parcel with Praveen as the accused taken out the parcel from his car with the ID of Rakesh Kumar. He also accompanied the father of accused Praveen Kumar on 15.11.2015 who is retired from Delhi Police to Alwar Jail. Both Praveen Ramavat and this Touhir Ahmed in their statements u/s 67 disclosed that parcel was booked by accused on the ID of Rakesh however ID of Rakesh was found fake. The mobile issued in the name of one Bilash stated to be Amit Pal is also not found traceable. Both Praveen Ramavat as well as Pammi in their statements before the NCB u/s 67 disclosed that the said parcel was booked by the accused Vikas Yadav on the ID of

one Rakesh containing the HP laserjet printer cartridge to be sent to UK.

29. Ld. counsel for the accused raised the plea that accused is not at all involved otherwise he can be apprehended when his statement dated 30.11.2015 u/s 67 was recorded. The statement of this accused was recorded on 30.11.2015, by which, he explained that the said parcel was given by Amit Pal with ID of Rakesh. The phone of Amit Pal was found to be in the name of one Bilash whose address is also found incomplete therefore a surveillance was also kept by IO Anand Kumar and approval was also taken from the Superintendent. As per the said surveillance, the accused was also using the mobile in the name of Girish Sharma and traces of Amit Pal is not found, and from the mobile locations there is definite suspicion upon the movements of accused. Till the statement of accused is recorded there was no definite suspicion over the accused. The suspicion over the accused arose after verifying all the informations provided by him. The number used by him is also of Girish Sharma who during interrogation revealed that he do not know anything about the said number thereafter when the NCB team went to arrest him, he was found to be apprehended by DRI team having been clandestinely manufacturing psychotropic substances at Bhiwadi. Thereafter the accused was interrogated with the permission of concerned court and arrested.

30. The prosecution examined PW9 Praveen Ramavat and PW5 Touhir Ahmad @ Pammi and PW4 Girish Sharma. PW9 Praveen Ramavat in his testimony stated that the narcotic officers enquired about the parcel and he told them that the said parcel was booked by Rakesh however thereafter not supported the prosecution case but in cross-examination by Ld. Additional PP after being declared hostile admitted his signatures on letter Ex.PW1/G in which he has mentioned that the said parcel is given by Vikas Yadav. He also admitted the notice Ex.PW1/F and further stated he knew Vikas Yadav and also know Pammi. He also admitted that he has given his statement u/s 67 Ex.PW1/E but stated that he do not recollect what he had stated in his statement. He denied that statement was voluntary. However in cross-examination stated that the said statement was dictated by NCB officers but on re-examination stated that he had not made any complaint to any

authority.

31. This witness in his testimony disclosed that a parcel has been given to him by Rakesh but admitted the letters Ex.PW1/G, and statement u/s 67. He also admitted that he knew Vikas Yadav and also Pammi. He was confronted with his statement which he admitted though he was not confronted on details of what is written in the statement. But as far as the factum of recording of statement and what is being written by him vide letter Ex.PW1/G is admitted by him. This witness is known to Vikas Yadav who is childhood friend of his friend PW5 Pammi @ Touhir therefore it is not expected from him that he will give the testimony supporting fully the prosecution case. However, from his testimony, the factum that the said parcel was booked by Vikas Yadav can be clearly inferred. As far as law relating to appreciating the testimony of hostile witness is concerned Hon'ble Apex court in "*C. Muniappan & Ors. Vs. State of Tamil Nadu 2010 (10) SCC 567*", after considering various judgments held the law relating to the testimony of hostile witnesses can be summarized to the effect that the evidence of hostile witness cannot be disregarded as a whole and relevant parts thereof which are admissible in law can be used by the prosecution or the defence.

32. Now it is pertinent to appreciate the testimony of PW5 Touhir Ahmed. PW5 Touhir Ahmed stated that Vikas Yadav and Praveen both are his childhood friends however he do not know about any parcel but appeared before NCB and wrote whatever is asked by NCB officials. However after being declared hostile, in cross-examination admitted that he introduced Vikas Yadav to Praveen though denied suggestion that he went with accused Vikas Yadav to Praveen for delivering the parcel. But from the testimony of PW9 Praveen it is clear that the parcel was delivered. Both these witnesses have admitted to have gone to NCB and their statements were recorded but not supported the prosecution case over the contents of the said statement but it can be inferred from their testimonies that a parcel was booked by Vikas Yadav. The statements u/s 67 are admissible however if the witness is not deposing in terms of the said statement, those statements could be relied upon for corroboration. From the testimonies of both these witnesses

alongwith their statements, it cannot be inferred that the prosecution unable to prove that the said parcel was not booked by Vikas Yadav.

33. Now it is pertinent to appreciate the statement of accused Vikas Yadav u/s 67 dated 30.11.2015 in which he has categorically admitted that he had booked the said parcel as handed over by one Amit Pal on the ID of Rakesh. The said statement is never retracted. When the said statement was recorded there was no grave suspicion over the present accused of arrest. The said statement is also not confessional in nature however provided the information about the booking therefore the said statement could be relied upon to the extent that he alongwith Pammi booked the parcel to Praveen of Galaxy courier on fake ID of Rakesh. The said parcel as per the statement u/s 67 of this accused and other witnesses contains hp Laserjet printer cartridge and this fact is duly corroborated with the invoices recovered at the time of recovery of parcel and its search from DHL office which is credibly proved by independent witness PW10 Akash Rathore and PW1 Anand Kumar and PW8 Manmohan Jakhmola.

34. The plea of the accused is that he wrote the statement under pressure of NCB official because they will not allow him to leave the office if he will not write such statement do not appear to be convincing. There is no occasion for the NCB officials to pressurising him because parcel is in name of Rakesh. Till that date the maximum information before the NCB is that the parcel was booked by him through Galaxy courier therefore he was called for interrogation. In his statement name of Amit Pal and his mobile was surfaced, however the mobile of Amit Pal found to be in the name of one Bilash whose address is found incorrect but the said mobile phone is found to be used in the area of accused and furthermore the movements of accused also found suspected. To corroborate the statement of the accused later on Praveen and Touhir Khan were also interrogated. The surveillance also kept on the accused and when the NCB officials became certain about the involvement of accused they found that he has already been arrested by DRI in a case in which accused is found to be apprehended for manufacturing drugs. Therefore, the plea of the accused that he wrote statement because NCB officials

will not allow him to leave is not credible. Furthermore, the statement of accused u/s 67 is not confessional in nature but for the purpose of providing information could be relied upon to corroborate the fact that the accused booked the parcel containing hp Laserjet printer cartridge and also some tablets.

35. Another pertinent question the prosecution has to prove that the parcel booked by the accused Praveen at Galaxy courier is the same which is recovered in DHL office. The said parcel was booked on 29.10.2015 and the said parcel was sent to Time Express by Praveen. The letter of Time Express also shows that it was booked by Praveen and Time Express immediately sent it to DHL with certificate of International Express who is authorized wholeseller of DHL Express. The prosecution however not examined any official of Times Express, International Express or DHL who received the said parcel. It is pertinent to appreciate whether this omission is fatal to the prosecution case or not. The parcel was booked as per the statement of Pammi @ Touhir u/s 67 NDPS Act in the night at 08.50 PM with Praveen at Galaxy courier and the information about contraband in the said parcel received on the next day at around 02.20 PM in the afternoon i.e. less than 18 hours. The parcel was sent in a normal mode. This procedure is a normal procedure for sending courier of this nature through a short time booking office i.e. Galaxy Courier to highest booking office. The said parcel is also connected through the documents recovered alongwith the parcel i.e. the invoice, photo ID of Rakesh, copy of PAN card of Rakesh which was given by the accused alongwith the parcel to Praveen.

36. Ld. counsel submits that alongwith panchanama, the document i.e. photo ID of Rakesh, airway bill, invoice in the name of Rakesh and a non responsible certificate was also recovered. Ld. Counsel submits that non responsible certificate Ex.PW1/DA and Ex.PW1/DB mentioning the same airway bill number but suggested to be containing 8 kg of decorative items. Ld. Counsel submits that therefore parcel is tampered and accused be given benefit of the same.

37. Alongwith the parcel the airway bill, photo ID of Rakesh, PAN card of Rakesh, invoice both photocopy and original received showing to be containing hp

Laserjet printer cartridge and on opening of the parcel the said hp Laserjet printer cartridge was recovered. The said parcel is sent to DHL through non responsible certificate of International Express. The said certificate is suggested to be showing the weight of 8 kg and the witnesses also stated that it appears 8 kg, however perusal of said original certificate Ex.PW1/DB and photocopy Ex.PW1/DA it can be easily inferred that it is 5.1 kg and because of some running handwriting, it appears 8 kg. The said certificate is stated to be in the name of some Ramesh Kumar however it cannot be held that it is Ramesh Kumar but appears Rakesh Kumar. It is the flow of handwriting which is misinterpreted even by witness in cross-examination. The said non responsibility certificate is for the purpose that the said parcel containing an article which could be damaged and the word decorative glasses mentioned on the said certificate however indicates that the said certificate is given on already typed proformas. This certificate cannot be seen in isolation and the certificate has to be seen in what conditions it was recovered. It was recovered alongwith the parcel when the accused is not in picture. The investigating officer has seized the articles and documents as recovered. He did not try to play with them. The investigating officer during investigation investigated the relevant parties who had booked the parcel. Praveen or Touhir during investigation not casted any doubt about the said parcel being booked by accused Vikas. They categorically stated during investigation the parcel containing hp Laserjet printer cartridge thus identity of parcel cannot be disbelieved because of theses documents Ex.PW1/DA and PW1/DB particularly when these documents are recovered with the ID of Rakesh Kumar and the invoice in the name of Rakesh Kumar to be sent to Manjeet alongwith parcl. The investigating agency has taken its own time in satisfying itself that this parcel is booked by Vikas Yadav. From their acts it cannot be inferred that they by hook or crook tried to involve the accused in this case. The investigating agency after satisfying itself that accused is involved in this case went to arrest him but then found that he is already apprehended by DRI therefore arrested in this case. These circumstances undoubtedly suggest that the accused booked the parcel in question.

False explanation of the accused

38. The information provided by the accused that the said parcel is given by Amit Pal is found false, the mobile number provided by Amit Pal is also false however the accused is found to be using mobile numbers one in the name of his wife, one in the name of Girish, his former employee and third of Amit Pal found to be active in the area where accused resides or works. From, mobile in the name of Girish, he is also found to be making international calls. From the testimony of Girish it is clear that accused was using his mobile. The false explanation of accused also creates doubt over his activity thus, strengthens the case of prosecution.

39. Ld. counsel submits that there are some writings on the back of airway bill Ex.PW8/B showing mobile numbers which is not explained by IO PW1 or PW8. This submission has no force because it only mentions the mobile numbers of relevant persons and nothing could be inferred from these writings that prosecution is trying to conceal the real culprit from these writings. This court has to appreciate the relevant evidence which is necessary to prove the prosecution case and could give benefit of only those lapses which can create dent over the core of prosecution case. Mere lapses in investigation negligent or designed are no ground to reject prosecution case when core of the case is intact. Apex court in "*C. Muniappan & Ors. Vs. State of Tamil Nadu 2010 (10) SCC 567*", observed that defective investigation by itself cannot be ground for acquittal. If the primacy is given to such designed or negligent investigations then the faith and confidence of people in criminal justice administration would be eroded. There is legal obligation on the part of court to examine prosecution evidence de hors such lapses. The investigation is not the solitary area for judicial scrutiny in the criminal trial. The conclusion of trial in a case cannot be allowed to dependent solely on probity of investigation.

40. In present case, the core of the prosecution case is handing over of parcel by the accused to Praveen Singh and recovery of contraband from the said parcel on checking by the raiding party. That aspect as already discussed, found credible thus, no benefit of this kind of discrepancy could be given to the accused.

41. On overall appreciation of evidence, the prosecution able to prove that the parcel containing contraband was booked by accused Vikas. Now the assumption arose in favour of prosecution u/s 35 and 54 NDPS Act and the accused has to rebut the said presumption. Accused has not led any defence evidence. The pleas raised by accused during investigation found false. The conduct of accused of using different mobile numbers in the names of different persons having international calls, and also found involved in other cases strengthens the case of the prosecution.

42. Hon'ble Apex Court in *Sachin Kumar Singhraha Vs. State of Madhya Pradesh 2019 SCC Online SC 363* held that it is worth reiterating that though certain discrepancies in the evidence and procedural lapses have been brought on record, the same would not warrant giving the benefit of doubt to the accused/appellant. It must be remembered that justice cannot be made sterile by exaggerated adherence to the rule of proof, in as much as the benefit of doubt given to an accused must always be reasonable, and not fanciful. In view of this proposition, no benefit of minor discrepancies and lapses could be given to the accused.

43. The accused found to have booked parcel concealing contraband though he was not in physical possession at the time of recovery but as he booked therefore in constructive possession. This is for accused to prove that he has no knowledge of concealment of contraband or not in conscious possession. 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.

xxx xxx xxx xxx

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.

44. As per the mandate of this judgment, accused unable to rebut the said presumption. The accused is also charged for offence u/s 471 IPC for using the forged ID of one Rakesh Kumar though the prosecution exhibited the report Ex.PW1/R of concerned Electoral Registration Officer which suggests that no such record exists however not examined the said witness or produced the relevant record therefore, offence u/s 471 IPC not stands proved by the prosecution. Hence accused acquitted of offence u/s 471 IPC.

45. In view of the above discussion, prosecution able to prove beyond reasonable doubt that accused Vikas Yadav has booked the parcel containing contraband ketamine thereby discharging the initial burden of proof now the presumption u/s 35 and 54 NDPS Act arose in favour of the prosecution. The possession implies the conscious possession and the accused has to prove that he has no knowledge or not conscious that the parcel containing the contraband but the accused Vikas Yadav unable to rebut the said presumption.

46. Accused Vikas Yadav found to be exporting the contraband ketamine in intermediate quantity out of India through courier. Thus found guilty of offence u/s 22(b) r/w section 28 NDPS Act. Accordingly, accused Vikas Yadav is convicted for commission of offence u/s 22(b) r/w section 28 NDPS Act. Let he be heard on point of sentence.

**Announced in the open court
on this 29th day of November, 2019**

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