

**IN THE COURT OF THE SESSIONS JUDGE: KAMRUP(M),
AT GUWAHATI**

NDPS Case No. 22/2013

(U/S 25-A read with section 9-A of NDPS Act)

Present: Md. M. Ahmed,
Sessions Judge
Kamrup(M), Guwahati

State of Assam

-Vs -

- 1) Lalmunthari**
- 2) Pradip Kumar Roy**

.....Accused Persons

Appearance for the Parties:

Advocate for the State : Mr. H.K. Deka, Learned Public Prosecutor
Advocate for the accused Persons : Mr. N Muhtarin, Learned Advocate

Date of recording evidence : 01.08.2013, 05.10.2013, 17.05.2014,
13.06.2014, 26.07.2016 & 05.09.2016

Date of Argument : 18.02.17

Date of Judgment : 06.03.2017

J U D G M E N T

1. Prosecution case in brief is that on 17.04.13 complainant Reba Kanta Deka S.I. of Police Guwahati R.P.F. lodged an F.I.R. before the Officer-In-Charge of the same police station alleging that on the same day at about 4:30 PM on receipt of the secret information, he along with his staff urgently went to platform no. 8 of Guwahati Railway Station and found 34 big size gunny bags with cloths and in those bags tablets suspected to be psychotropic substance were seized. Those packets were marked as 2931964/17 and 2931963/17 booked from New Delhi. The accused Lalmunthari, w/o Lalruat Kima, of Chaltlong, P.S. – Bawngkawn, Dist: Aizwal, Mizoram and Pradip Kr. Roy, s/o Dharendra Narayan Roy of Jhaskhal, P.S – Golokgani, Dist: Dhubri were found there with the narcotic drugs and they have failed to produce any valid documents in support of their transporting those articles. On the basis of the same, the case was registered and it was investigated into and during investigation the I.O visited the place and recovered all the narcotic contrabands. The accused persons were subjected to interrogation. The accused Lalmunthari admitted that she was carrying a business of narcotic drugs with the help of the other accused. The total weight of the tablet seized in connection with this case was about 570 kg. The G.R.P.S Guwahati authority authorized the city officer/informant to take necessary action in respect of the recovered tablets as per provision of NDPS Act. Both the accused persons were arrested on 18/04/2013 and were produced before the Court wherefrom they were remanded to judicial custody.

2. The samples taken from that consignment were sent to FSL for chemical examination and chemical analyst upon examining had found that the sample sent to the FSL gave positive test for pseudoephedrine. Thereafter on receipt of the report and upon completion of investigation, the I.O having found sufficient implicating materials submitted the charge sheet against both the aforementioned accused for alleged offense punishable under section 25-A of NDPS Act read with 9-A of Narcotic Drugs and Psychotropic Substances Act, 1985. At the initial stage, both the accused faced trial from behind the bars ; subsequently

they were let off on court bail. However, during trial accused Lalmunthari jumped bail and went into hiding ; her attendance could not be procured despite exhaustion of all the processes of the court. Finally case against her was filed. Initially charges against both the accused persons were framed by this court. Both the accused were furnished with the copies of relevant documents as mandated under section 207 of Cr.P.C. Thereafter my learned predecessor in court having heard Ld Counsel of both sides and basing upon the material on record framed charges under section 25-A read with 9-A of NDPS Act and read over and explained contents therein to both of the them to which they jointly pleaded not guilty and claimed for trial.

POINTS FOR DETERMINATION

3. In this instant case, this is to be determined if on the eventful day at Guwahati Railway Station at transport office accused Pradip Roy was found in possession of 34 packets with huge numbers of tablets suspected to be narcotic drugs and those bags containing pseudoephedrine, thereby committing offense punishable under section 25-A and 9-A of NDPS Act.

4. In this case the prosecution has examined as many as 13 PWs. After the process of recording evidence of the witnesses so adduced from the side of the prosecution was included, accused available for trial i.e. accused Pradip Kumar Roy was subjected to examination as warranted under section 313 of Cr.P.C with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. According to him, he had not taken charge of all those packets ; one mizo lady received the same at Guwahati Railway Station on that day. He has further stated that nothing was recovered from him ; he was hired by a Mizo lady i.e. the other accused who was owner of the parcels ; he came to the place of occurrence on instruction of the said lady. He has further pleaded that he was not the driver of the truck. He also pleaded that the carrying capacity of his auto van was limited. The truck was hired by that Mizo lady to take those bags from the Guwahati Railway Station. He has also stated that RR were issued in the name of that lady who brought the said truck. He has also stated that Bhupen Baishya was the driver of the said vehicle. He has also pleaded that the said Mizo lady i.e. the other accused took delivery of some gunny bags at the

transport office which he has carried in his auto van. He has further pleaded that the said mizo lady hired the truck from Sri Bhupen Baishya and he was also hired by the said mizo lady.

5. From the above, it is apparent that the accused does not contradict the fact that on the eventful day he was found at Guwahati Railway Station and he was accompanied by mizo lady to the transport office where the mizo lady took the delivery of some gunny bags. He has pleaded innocence on the ground that he was engaged by the said mizo lady to transport the consignment. He had no knowledge at that time that the gunny bags were containing any contrabands. He has further pleaded that he was the owner of the said auto-van which he brought to carry the bags. Further its carrying capacity was very limited and then other vehicle was hired ; that vehicle was driven by one Bhupen Baishya. Thus from the above, it is clear that the accused does not dispute the recovery of contrabands from the Guwahati Railway Station on that day in his presence. The prosecution has alleged that on that day 34 gunny bags were received at the Railway Station by both the accused persons containing tablets which were subjected to chemical examination through FSL and were found to be pseudoephedrine. The Ld. P.P. of the court vehemently submitted that Central Government vide its notification published in Government of India etc in part - II section 3, sub-section (II) published by authority on December 28, 1999 B.A 121 had notified that the Central Government in exercise of the power conferred under clause (viii) of section 2 of the Narcotic Drugs and Psychotropic substances Act, 1985(61 of 1985) declares Ephedrine and Pseudoephedrine and their salt as controlled substances for the purpose of said clause. Section 9(A) of NDPS Act provides that if the Central Government is of the opinion that, having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

6. Without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage,

distribution, disposal or acquisition of any controlled substance.

7. Now coming to the evidence of PW.4, Dhrubajyoti Hazarika it is seen that on 19.04.13 while he was working as Senior Scientific Officer, the Drugs and Narcotic Division, Directorate of Forensic Science, Assam he received a sealed parcel from the Director in connection with a Guwahati Government Railway Police Station Case No.35 of 2013 dated 17.04.13. The sealed parcel consisted of one exhibit in a sealed envelope. Facsimile of the seal was found to be "GHTY:GRPS". He had given description of the given article as one sealed envelope having a closed polythene packet containing 203 nos. of white tablets weighing 22.5 gm, marked as "SA-1". The same was marked by him as DN-156/2013. After examination he has found that exhibit DN-156/2013 gave positive test for pseudoephedrine and amount of pseudoephedrine was found to be 58.23 mg per tablet. He proves exhibit-6 his report, he signed on exhibit-6(1). He also proves exhibit-7, the forwarding of his report under the signature of Director-In-Charge, M.N Bora on ex.7(1).

8. Thus from the evidence of this witness, it is abundantly established that the samples sent to the FSL tested positive result for pseudoephedrine. The quantity in material in such case the section provides that without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession...

9. It is provided that if any person is found in possession of the control substance he may be punishable under section 25(A) of NDPS Act.

10. In this case the accused does not deny the recovery of controlled substances at Guwahati Railway Station on the eventful day. He also does not deny that he was present at the relevant time. His only plea is that he was completely in the dark as regards the tablet kept concealed in bundle of cloths in those 34 gunny bags. His only claim is that his service was hired by the mizo lady and he accordingly went to the railway station in his auto van. He also does not deny that he accompanied the mizo lady to take the delivery of the consignment.

11. Now keeping in view the stands taken by the accused in this instant

case let us proceed to discuss the evidence on the record to see if the prosecution has able to establish the guilt of the accused. At the very outset, we may take the evidence of PW.1 ; he is Rebak Deka then working as officer-In-charge of Guwahati Railway Station. According to him on 17.04.13 he received a secret information to the effect that some suspected drugs concealed inside cloth parcels had reached Guwahati Railway Station. The said information was reduced into writing vide General Diary Entry No. 490 dated 17.04.13. He proves exhibit-1 as the certified copy of the said General Diary Entry No. 490. Accordingly, he apprised this matter to the inspector of Railway Police Station over telephone and after sometime, he appeared at the railway station. PW.1 also went there accompanied by his staff. They went to the railway parcel office situated at platform no. 8 of Guwahati Railway Station. By this time accused Pradip Roay took the delivery of those parcels from the parcel office and he was preparing to leave the spot, when he was apprehended by PW.1 and other Railway police officials along with those parcels. On enquiry this accused informed them that the parcels consisted to be textile ; then on suspicion they took the accused Pradip along with all parcels in his possession to Guwahati Railway Police Station. During interrogation, accused Pradip Roy, informed that he was not the owner of those parcels; one Mizo lady was the owner of the parcel; then railway officials asked him to inform the said mizo lady by directing her to come to the Railway Police Station. Accordingly, the said mizo lady (other accused) arrived at the place of occurrence and she claimed ownership of the parcels. She also claimed that the parcels contained dress materials. Thereafter in presence of both the accused persons, the parcels were opened and some loose tablets containing suspected drugs were found to have been kept hidden inside the cloths. The parcels covered with gunny bags contained a variety of cloths, total number of gunny bag parcels were 34. The inspector of Railway Police was also present at the time when the parcels were being opened. Thereafter, the Inspector, Railway Police issued one Authority Letter in vide exhibit-2 in favour of PW.1 to take preliminary steps under the NDPS Act. Therefore, the PW.1 took weight of the suspected drugs after removing them from the cloths folds and the total weight was found to be 570 kg. Thereafter in presence of witnesses he seized –

- I) 34 number of plastic poly-bags containing different packets of

tablets suspected to be psychotropic substance.

- II) 34 numbers of gunny bags containing varieties clothes.
- III) One railway gate pass bearing no. 3699 dated 17/04/2011.
- IV) One Voter Identity Card in the name of Lalmunthari of Aizwal (Mizoram).
- V) Cash amount of Rupees One Lakh (Rs.500 denomination) and three thousand.
- VI) One Sumung Mobile(DUOS) bearing SIM No. 8014774474
- VII) One black coloured ladies handbag and
- VIII) One Nokia Mobile handset bearing SIM No. 9435462290 in the name of Pradip Kumar Roy.

He proves exhibit.3, the seizure list. He also proves exhibit.3(1) by taking signature of Pradip Roy on that document. This witness further stated that at the police station, he collected sample consisting of 10 tablets from each bag and sealed the same in presence of witness. He again identified M.Exhibit-1 and M. Exhibit-2 are the two bags out of 34 bags seized by him containing the suspected drugs. He also identified M.Exhibit.3 the railway gate pass ticket. M.Ex.-4 is the voter identity card of the lady accused Lalmunthari. M. Exhibit- 5 is the cash of Rs.1,03,000/-. M. Exhibit. – 6 is the Sumsung Mobile handset with SIM card. M. Ex – 7 is the Nokia Mobile handset with SIM Card. M.Ex.-8 is the black colored lady handbag.

12. Thereafter, he filed the formal F.I.R. at Guwahati Government Railway Police Station which he proves as exhibit.4. He has further stated that he did not make any General Diary Entry after taking the accused person along with the seized articles to the police station but he submitted the formal F.I.R. and received the same as the Officer-in-charge of Guwahati Government Railway Police Station. He has also stated that he had not made any General Diary Entry after his return from platform no. 8. He also did not make any enquiry as wherefrom the parcels were sent and by whom. He denied the subjection that he had not prepared the weighment sheet of the seized tablets. He further denied that he was not authorised by his senior officials to take necessary steps under the NDPS Act before starting the operation. Has further admitted

exhibit.2, the Authority Letter was issued to him after the recovery of the alleged parcels. He has also stated that in all the material exhibits there are no material labels containing the signature of the Seizing Officer, accused persons and any seizure witness. He has also stated that he seized the articles in the Police Station compound itself and not in the place of occurrence. He denied having not stated before the police in his statement that accused Pradip Roy was caught while he was preparing to leave the place taking the delivery of parcels containing suspected drugs. However he admitted that the accused Pradip Roy disclosed before him that he was not the owner of the seized articles. He denied that accused Pradip Roy, being the auto driver, came to receive the alleged articles from the platform no. 8.

13. PW.2 is Girindra Nath Haloi, ASI of Police, then stationed at Guwahati Railway Station. He has stated that on 17.04.13 on receipt of secret information that some contraband drugs have been sent through railway parcel office situated at platform no. 8, Guwahati Railway Station, he along with PW.1 Reba Kanta Deka Officer-in-Charge Guwahati Government Railway Police Station, A.S.I of police Sudarshan Bharati along with staff went near the parcel office to enquire about the truth of the information. While reaching there, they noticed that some gunny bags were being loaded in a Tata Magic Minu Truck. On suspicion, they brought the truck along with gunny bags and driver of the vehicle (accused Pradip Kr. Roy) to the Government Railway P.S. Accused Pradip Kumar Roy disclosed that he was not the owner of the vehicle and on being asked, he sent information to the owner of the truck and owner of the articles accused Lalmunthari arrived at the P.S. and in presence of the lady accused and accused Pradip Roy the Railway Police officials opened the gunny bags and found that inside the variety of cloths were found in those gunny bags, with a large number of tablets, suspected to be narcotic drugs which have been kept hidden inside the said gunny bags. These tablets were accordingly seized by PW.1 in his presence. Sudarshan Bharati, ASI of police was then attached to Guwahati Railway Police Station at the relevant time. According to him on 17.04.13 on receipt of secret information by Officer-In-Charge of Guwahati Government Railway Police Station that some contraband drugs had been sent through Railway Parcel Office situated at platform no. 8 of Guwahati Railway Station, he along with Officer-in-Charge of Guwahati Railway Police Station Reba Kanta Deka

(PW.1) ASI of Police, Grindra Nath Haloi along with other staff went to the platform no. 8 of Guwahati Railway Station. On enquiry about the matter on reaching there they noticed some gunny bags were being loaded in the truck. On suspicion, they brought the truck along with gunny bags and vehicle driver accused Pradip Kumar Roy to the Government Railway Police Station. When they asked the driver about the ownership of the truck and parcels loaded in the aid truck, accused Pradip Roy informed them that Lalmunthari was the owner of the said truck and parcels. Thereafter the accused Pradip Roy called the other accused Lalmunthari to the Police Station. Thereafter in presence of owner Lalmunthari and the driver of the truck accused Pradip Roy gunny bags were opened and it was found that inside the cloth kept within the gunny bags a large number of tablets, suspected to be narcotic drugs which were kept hidden and those tablets were accordingly seized by PW.1. He has further stated that he was not the owner of the truck and on being informed by him, accused Lalmunthari arrived in the Police Station and she admitted that she was the owner of the said vehicle.

14. Evidence of PW 5,6,7,8 may be discussed together as they are all police officials and deposed likewise and according to all of them at the relevant time, they were attached to Guwahati Railway Police Station and on that day they along with PW.1, 2 and 3 went to Railway Parcel Office situated at platform no. 8 at Guwahati Railway Station and on reaching there they found that bags were being loaded in a Tata Magic Mini Truck. On suspicion, they brought the truck along with the driver of the articles (accused Pradip Kumar Roy) to the Government Railway P.S. When the gunny bags were opened by the official, it was found that the said bags contained some old cloths and inside those cloths a number of tablets suspected to be narcotic drugs had been kept hidden. The said tablets were accordingly seized by PW.1. When the accused was asked who was the owner of the said articles, he telephoned the owner and accordingly one lady arrived at the P.S. and claimed that said gunny bags were sent to her and she was the owner of the those bags.

15. Now we come to the evidence of PW.12, Sri Niron Deka Sub-Inspector of police who was attached to GRPS, Guwahati. On 17.04.13. S.I Rebo Kanta Deka, the Officer In-Charge GRPS, Guwahati endorsed GRPS Case No. 35/2013 u/s 22(C) /29 of NDPS Act, to him to complete the investigation. He has

stated that SI Reba Kanta Deka filed the said FIR. He has stated that during the investigation he visited the place of occurrence, i.e. platform no. 8 of Guwahati Railway Station and prepared a sketch map vide Ex.8. He further stated that he recorded the statement of the witnesses including the police personnel who detected the commission of the offence. In connection with the case, he further seized one magic van, being registration No. AS 01 EC 2561, on being produced by its registered owner Shir Mintu Kr. Baishya. It may be noted that from the evidence of PW.12 it is seen that the Tata Magic Van belonged to one Mintu Kr. Baishya. The said Mintu Kumar Baishya is not examined in the instant suit. Neither the driver of the said vehicle was examined by the prosecution. Proceeding further we have found that PW.12 in his evidence has further stated that he also seized 2 challans (R.R.) relating to the seized goods. He has further forwarded the samples of the seized tablets to the FSL, Assam, Guwahati for chemical examination and the samples of the seized tablets were collected by the informant himself.. Then he collected the FSL report which shows positive result ; on completion of investigation he laid charge sheet under section 22(A) of NDPS Act against the present accused and the accused Lalmunthari. He proves exhibit.11 as the said charge sheet. He affirms that PW.1 Rebo Kanti Deka did not state in his statement given before him that the accused Pradip Kr. Das was caught red handed while he was preparing to flee from the spot taking the delivery of the parcel containing suspected drugs. He has further admitted that when producing the accused persons before the court, he denied having not submitted any detailed report to the Ld. Chief Judicial Magistrate, Kamrup(M) regarding the charge and seizure memos, Exhibit-8,9,10. He further stated that he intimated senior officer orally He is the last witness examined on the side of the prosecution. After that we shall discuss the evidence of PW 9,10,11.

16. Now coming to the evidence of PW.13 we have seen that he in his evidence has stated that he is actually a labourer by profession. One day in the year 2013, one Mizu Lady engaged him for loading and un-loading of 35 numbers of cloth bundles @Rs.10/- per bundle at Guwahati Railway Station. Accordingly he started to load the bundles, which were lying in the parcel office of the station in an auto van. . In the meantime, police arrived at the spot and told him to stop loading. At that relevant time, the present accused and the other accused i.e. the mizu lady were present. On opening the cloth bundles, police

recovered some packets containing tablets. Police also recovered some old cloths inside the bundles. Police seized all the articles along with the packets containing tablets vide exhibit no.2. He has further stated that the present accused Pradip Roy is an auto van driver. He also took delivery of the packets as per contract with the mizo lday. At that moment, police arrived and on being asked by police, accused Pradip Roy called the Mizu lday, who was the owner of the articles. The said lady then told cloths bundles were supposed to be taken to Khanapara, Guwahati. As per evidence of this witness ,it is apparent that he was engaged by one mizo lady for loading and unloading the consignment in a vehicle and as soon as he started loading those bags, in the meantime police reached there ; at that time both the accused were present and upon opening the cloth bundles, police recovered some packets containing tablets concealed inside some old cloths. Thus from the entire evidence on record ,,we have found that two vehicles were involved in transportation of those consignment ; one was auto van which belonged to the accused Sri Pradip Roy . The other vehicle is Tata magic van, being registration No. AS 01 EC 2561 and according to PW.2 this vehicle belonged to one Mintu Kr. Baishya. In his statement recorded under section 313 of Cr.PC. the accused has claimed that Sri Bhupen Baishya was the driver of the said vehicle, this Bhupen Baishya is examined by prosecution as PW.11. In his evidence he has stated at the relevant time, he was driving a vehicle, carrying goods ; accused hired his vehicle on rent of Rs.800/- and asked him to come to Guwahati Railway Station to transport the articles. Accordingly he reached the Guwahati Railway Station ; loading was started ; then at the moment police reached and have enquired about the ownership of those parcels, then accused told him that he was carrying those bags ; the accused was earlier known to this witness. He used to drive an auto van ; then the police took the vehicle along with him to the Police Station. The police informed him that those bags contained some narcotic drugs. Accordingly police seized those parcels in his presence vide exhibit.3. He has further stated that the accused told him that he brought his own vehicle there ;but as his vehicle did not have sufficient space to accommodate all the parcels because of that he called his vehicle there.

17. PW.9 is Sri Kamaleswar Baishya he is the owner of the said Tata Magic Mini vehicle and in his evidence stated that his driver called him to GRPS and on reaching, there he came to know that his driver was in lock-up and the

driver informed him that the accused lady took the vehicle on rent. He has further seen some gunny bags being recovered by police. He also stated that the police opened the same and recovered a number of tablets suspected to be drugs concealed in the bundle of cloths.

18. PW. 10 is Munindra Seal @ Mono Ray and his evidence is very relevant. He was working as the Chief Commercial Clerk, N.F. Railway at the relevant time ; according to him on 17.04.13 while he was on daily shift duty, one boy along with the other accused came to the parcel office to take delivery of the parcels through RR . On that RR it was written as old cloth parcel. Then he issued a Gate Pass in favour of the accused. After that police come to the spot and informed him that bundle containing drugs articles. He has further stated that counter slip of RR was seized by the police. He has further stated that gate pass is issued in the name of the person who comes to the parcels office to take delivery of the parcels.

19. I have subjected the evidence of this witness to critical analysis along with the evidence made by all the witnesses ; I have found that the prosecution by leading cogent and convincing evidence has succeeded to establish the fact that on the eventful day 34 gunny bags were recovered from those bags containing control substance amounting to 570 kg.

20. The prosecution has alleged that aforementioned accused was caught there along with the other accused with narcotic drugs and as such it may be held that he had the knowledge that the parcels contained contrabands. It is submitted by the learned counsel for the defence that in this case sub-section 2 section 42 is not complied with; drawing the attention of this court to the evidence of PW, the learned defence counsel has stated that secret information that was later reduced into writing vide General Diary Entry No. 490 dated 17.04.13, there is no ground to come to the finding that the copy of the same was forwarded to the superior authority.

21. Thus there is a violation of the mandatory provision of law and benefit for such non-compliance should go in favour of the aforementioned accused. In support of the same, the learned counsel for the accused he has placed before this court the following judgments:

- i. Jagdav Singh v/s State of U.P./ 2013 Volume – II ,SCC 212
- ii. Carnal S v/s State of Haryana 2009(8) SCC 531 Sing2009(8) SCC 539

22. Upon going through above cited judgments and having regard to the evidence on record it is found that the prosecution has failed to comply with provision section 42 of NDPS Act. This provision mandates that the officer who took any information in writing, under sub-section (1) or records grounds for it is provided that the officer who taking down any information in writing and recording in his belief under the proviso thereto, he shall forthright send a copy to the immediate official superior within 72 hours. It is claimed by the accused that Gate Pass (RR) was issued in the name of the Mizo lady .

23. The learned counsel for the prosecution has contended that the present accused did not dispute at the time of recovery of those substances from those gunny bags. In such circumstances presumption of the section 35 of the NDPS Act may be drawn by this court ; to address the contentions of the learned counsel for the prosecution this Court deems it proper to re-produce the relevant provision to see whether this Court should draw the presumption under this act. Section 35 of NDPS Act provided that in any prosecution for offence under this Act which requires a culpable mental state of the accused to prove the fact that he had no such mental stage with respect to the charge as an offence in that prosecution.

24. Except of this section Culpable” includes intention, motive, knowledge of a fact and belief in, or reason to believe the fact.

25. It is held by the Hon’ble Supreme Court in the case Abdul v/s state of Gujarat that presumption under section 35 can be discharged through other modes, one is that he may rely on the materials available in the prosecution evidence.

26. In addition to that he can elicit the materials from prosecution witness through cross examination or it may be discharged when he has called upon to enter on his evidence ; in other words if circumstance appear for prosecution or in the prominence evidence and such as to give reasonable assurance to the court that appellatant could not have knowledge or required

information to obtain showing his implication

27. In the instant case ,should this court draw presumption as mentioned in the section 35 of NDPS Act ; to seek answer to the query, this court has attentively evaluated the evidence on record and has come to the findings that throughout the trial the prosecution has failed to establish the fact that the accused was having any mental stage to commit this offence. The accused has taken the plea that his service was hired by the mizo lady ; accordingly he went to the Guwahati Railway Station with his auto van and he also carried the bags of the parcels office, he took the delivery of the parcels and he loaded the same in his auto van. The consignments were going to be loaded in the Tata Magic Van when the police arrived at the spot and took the custody of the entire consignment. If the accused was having any knowledge that a huge quantity of control substance being packed in 34 numbers of gunny bags were reaching Railway Station, then he would have gone there with a big vehicle ; but it is not the case ; he went there with his auto van and it clearly shows that he was not having knowledge regarding the contents of those bags. In this case ,prosecution has also failed to lead evidence to at least show that the present accused was in any way connected with the mizo lady. The police authority did not make any inquiries to connect the present accused with the said Mizo lady. They have failed to collect sufficient evidence on the fact that both of them professionally were known to each other or present accused and the other accused were in regular contact with each other or both of them conjointly came to the Railway Station to take delivery of the consignment ; but the evidence on the point is lacking in this instant case. Apart from all these, the prosecution has failed to lead evidence to show as to where those seized articles were kept after its recovery. The section 55 of NDPS Act mandate officer-in-charge of Police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all the articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. In this case there is clear of the provision of law.

28. The prosecution has failed to establish the fact that during the intervening period, where those bags were kept. No officials of Malkhana were examined, nor any document of the Malkhana was submitted at trial. The prosecution has failed to lead satisfactory evidence to show that those contrabands were in proper custody and were in proper form and the samples were sent to the F.S.L after observing the mandate of law. Viewed from all angle and in view of the aforementioned above facts and reasons thereof, this court is of the considered opinion that the prosecution has failed miserably to establish the guilt of the accused for alleged commission of offence punishable under section 25-A and 9-A of NDPS Act beyond all reasonable doubt ; in the result, the accused is found not guilty and is acquitted and set at liberty forthwith.

29. The bail bond of the accused stands discharged.

30. Signed, sealed and delivered in the open court on this 6th day of March, 2017 at Guwahati.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

- Ext-1 : Certified copy of the said General Diary Entry No. 490
- Ext-2 : Authority Letter.
- Ext-3 : seizure list.
- Ext-4 : F.I.R.
- Ext-5 : printed form of the F.I.R.
- Ext-6 : FSL report.
- Ext-7 : Forwarding letter of the report.
- Ext-8 : Sketch map.
- Ext-9 : Seizure Memo.
- Ext-10 : Seizure Memo.
- Ext-11 : Final Report

(B) Material Exhibit :

- M.Ex-1 & 2 : The two bags out of 34 bags containing suspected drugs.
- M.Ex-3 : The Railway Gate Pass Ticket.
- M.Ex-4 : The voter identity card of lady accused Lalmunthari.
- M.Ex-5 : The cash of Rs.1,03,000/-.
- M.Ex-6 : The Sumsung Mobile handset with SIM card.
- M.Ex-7 : The Nokia Mobile handset with SIM card.
- M.Ex-8 : The black coloured lady handbag.

(C) Defence Exhibit : Nil

(D) Court Exhibit : Nil

(E) Prosecution Witnesses:

- PW-1 : Sri Reba Kanta Deka
- PW-2 : Sri Girindra Nath Haloi
- PW-3 : Sri Sudarshan Bharati
- PW-4 : Dr. Dhurbajyoti Hazarika
- PW-5 : Sri Binod Kumar Dey

PW-6 : Sri Dinesh Kumar Upadhyay
PW-7 : Sri Sunil Kumar Singh
PW-8 : Sri Jitendra Narayan Singh
PW-9 : Sri Kamaleswar Baishya
PW-10 : Sri Munindra Seal @ Mono Ray
PW-11 : Sri Bhupen Baishya
PW-12 : Sri Niron Deka
PW-13 : Sri Ramesh Roy

(F) Defence Witnesses : Nil

(G) Court Witnesses : Nil.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati