

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

NDPS Case No. 55/2014
(Under Section 20(b)(ii)C of NDPS Act.)

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

Union of India

- Vs -

Sri Ashik Yadav
Sri Pintoo Kumr

.....**Accused persons**

Appearance for the Parties:

Advocate for the Union of India: Sri B. Sarmah, Learned Standing Counsel.

Advocate for the accused : Sri R. Medhi, Learned Advocate

Date of recording evidence : 12.03.2015, 22.07.2017, 21.11.2015, 06.01.2016,
09.02.2016, 05.04.2016, 25.05.2016,
15.06.2016, 27.07.2016,

Date of Argument : 22.02.2017

Date of Judgment : 10.03.2017

J U D G M E N T

1. Prosecution case in brief is that in the wee hours of 19.06.2014, acting on specific information the officers of Anti-Smuggling Unit, Guwahati Customs Division, Guwahati effected seizure of 36(thirty six) packages containing Ganja (cannabis) concealed in a secret chamber specially built in the front portion of the container of the truck under registration No. UP-70-DT-3635 under the provisions of the NDPS Act, 1985, after observing all the requisite formalities; accused Aashik Yadav and Pintoo Kumar the driver and the handyman of the said vehicle were arrested U/S 43 of NDPS Act, 1945. On 18.06.2014 at around 1900hrs specific information was received by Sri Ridip Hazarika, Inspector to the effect that a huge quantity of ganja would be loaded in a secret chamber built in the front portion of a closed body container truck bearing registration No. UP-70-DT-3635, somewhere in Udalguri area late in the night. It was further informed that after loading the truck will move out of the region and was expected to cross Baihata Chariali area in the early hours of 19.06.2014. The information received was reduced into writing and was forwarded to his immediate superior officer. Acting on the said information Sri D.C. Bania, Superintendent Anti-Smuggling Unit, immediately formed a team of other officers and Dr. S. Roy Superintendent of Anti-Smuggling Unit, formed a team of other officers namely Sri Ridip Hazarika, Inspector, S. S. Basumatary, Inspector, Ramesh Singh, Inspector, M.I. Singh, Inspector, Sri P.K. Deka, N. Mandal, Sepoy and T. Kamraju, Sepoy of customs Division, Guwahati and they immediately proceeded towards Baihata Chariali area and started keeping surveillance on all closed body container truck coming from Tezpur side. Before laying naka officers approached several persons and told them about the information and also requested them to be witnessed to the whole operation. But all of them refused and left the area without disclosing their names or addresses. Thereafter, the officers continued surveillance in course of surveillance at around 04.30hrs on 19.06.2014 saw the six wheeler closed body container truck coming from Tezpur side which matched with the information received. On being signaled the truck stopped and on close observation it was found that the registration No. of the Truck is UP-70-DT-3635. As the registration number of the container truck as well as other description of the truck matched with the information received by the officers. After the said

truck stopped, the officers after introducing themselves enquired with the driver about the items loaded in the container and its destination. At the time of interception there were two occupants inside the container Truck including the driver of the tanker. On being enquired the driver introduced himself as Ashik Yadav and told the officers that the truck is empty and they were on their way to Nalbari. The Assistant of the truck UP-70-DT-3635, introduced himself as Pintoo Kumar. The officers then informed accused Ashik Yadav the driver of the container truck that they intercepted the container truck on receipt of specific information that it was transporting a consignment of ganja concealed in a secret chamber built for this purpose in the front portion of the container. The officer further told them that they would check the container and requested them to bring the container truck to the Customs office. After accused Ashik Yadav agreed the custom officers brought the closed body container truck UP-70-DT-3635 along with both the occupants to the customs office located at Nilamani Phukan Path, Christan Basti, Guwahati for detail checking and completion of seizure formalities. On being asked by the customs officers, driver and helper of the truck showed the officer the secret chamber built in the front portion of the container in presence of two independent witnesses and also the vent through which the packets containing ganja were secreted. On careful observation by the customs officers in presence of the witnesses it was found that the vent was covered by a tin sheet which was held together by four nuts. On being asked by the officers, accused Ashik Yadav, driver of the said truck opened the tin covering by removing the four nuts in presence of the witnesses with the help of wrench the driver had in his cabin. On removing tin covering, the secret chamber could be seen and on examination in presence of driver and assistant of the container truck and the witnesses it was found to have contained several packets rectangular shaped HDPE and gunny bag packages concealed inside secret chamber. The officers then removed one such packet in presence of the driver and assistant of the container truck and the witnesses and on examination the packets were found to contain ganja in compressed form. The officers then removed all such packages concealed inside the secret chamber in presence of the driver and the assistant of the container truck and the witnesses. After all the 36 (thirty six) packages containing ganja were removed the officers measured the cavity of its secret chamber specially built in the front portion of the container in presence of the driver and helper of the truck and the witnesses and on measurement the length of the secret chamber was found 8ft 2inch in breath and

2ft 8inch in height. All the recovered packages were then examined in presence of driver and assistant of the container truck and the witnesses and on examination of the packages numbering 36(thirty six) were found to contain ganja in compressed form. The packages were then weighed in the electronic weighing scale allotted to the Anti-Smuggling Unit in presence of the driver and assistant of the container truck and the witnesses and the weight of each packages recorded in a separate weightment sheet. The net weight of the ganja contained in the 36 (thirty six) packages were estimated at 1056.500 Kgs. The recovered quantity of ganja was then seized in the provisions of NDPS Act, 1985. The six wheeler container truck bearing registration No. UP-70-DT-3635 having the secret chamber built within the container and exclusively used for transportation of the seized quantity of ganja was also seized along with the documents related to the seized truck under the provision of NDPS Act, 1985. On being asked both the driver and assistant of the truck voluntarily handed over their respective mobile handsets, which were also seized. All the seized articles were then listed in an inventory of goods seized in presence of the driver and helper of the truck and in presence of two witnesses. In this connection a case was registered vide No. 03/CL/NARC/AS/GAU/2014-15 dated 19.06.2014. The cumulative value of the seized goods were estimated at Rs. 67,26,500/- (Rs. Sixty seven lakhs twenty six thousand five hundred). A copy of the inventory of the goods seized along with its annexure was handed over to accused Ashik Yadav, driver of the said truck . During examination accused Ashik Yadav driver of that truck in his statement dated 19.06.2014 stated his parentage and address as S/O Sri Kanhaiya Yadav resident of village: Bitari, PO & PS: Marwadi, Varanasi Uttar Pradesh, sating inter-alia that he had been engaged as driver of the closed body container truck by Sri Durg Vijay Yadav the owner of the said truck to transport ganja from Assam to his residence near Chowk Bazar in Varanasi, Uttar Pradesh. The owner of the seized quantity of ganja is Sri Durg Vijay Yadav, the owner of the truck. He has also stated that this was his second trip in transporting ganja from Assam to Uttar Pradesh. The consignment of ganja was loaded at a place located about 7/8kms away from Kharupetia in the district of Darrang, Assam. He was present at the time of loading of the ganja in the container truck. However, he did not know the name and address who supplied the said quantity of seized ganja. But he met one Dilip who delivered the said consignment to him.

2. It is further emerged from his statement that he was engaged by the owner of the truck Sri Durg Vijay Yadav who was paid Rs.50,000/- (Rs. Fifty thousand) per trip by him for transporting ganja from Assam. Thus, the Custom Department has alleged that from the same it is evident that the accused Ashik Yadav driver of the truck UP-70-DT-3635 was directly and consciously involved in illicit trafficking of ganja in violation of Section 8 (c) of NDPS Act,1985 inasmuch as he was involved in carrying and transporting ganja, which was seized from his possession; accordingly, accused Ashik Yadav was arrested U/S 42(1) (d) R/W section 43(b) of the NDPS Act, 1985 on 19.06.2014 on reasonable belief that he had committed an offence punishable U/S 20 of chapter IV of the NDPS Act, 1985 involving in carrying, concealing and transporting commercial quantity of Ganja (cannabis). The grounds of arrest were duly communicated to him as well as intimated to his immediate family members. During examination of another accused namely Sri Pintoo Kumar, assistant of the Truck No. UP-70-DT-3635 he has revealed his address as S/O Kanhal Kumar, village: Bhadawar, PO: Basgaon, Dist: Azamgarh, Uttar Pradesh and during interrogation it was found that he was engaged as helper in the closed body container truck UP-70-DT-3635 by accused Ashik Yadav, the driver of the truck. He has come from Azamgarh, Uttar Pradesh to Guwahati, Assam on being asked by accused Ashik Yadav; who dropped him from the truck in a line hotel in Kharupetia and he left that place with another two persons. After about 2^{1/2} hours, Ashik Yadav came back with the said truck; they had food in that line hotel at Kharupetia and at that time he was informed by Ashik Yadav that ganja was loaded in their truck. After that they left that place and started proceed towards their destination. Thus, the Customs Department has alleged that accused Pintoo Kumar was aware of transportation of the ganja by that truck. The custom has further alleged that accused Pintoo Kumar with co-occupants of the said truck directly or consciously involved in the illicit trafficking of ganja in violation of Section 8(c) of NDPS Act,1985 inasmuch as he was involved in carrying and transporting of ganja which was seized from his possession; accordingly, accused Pintoo Kumar S/O Kanhal Kumar the co-occupant of truck No. UP-70-DT-3635 was arrested U/S 42(1) (d) R/W section 43(b) of NDPS Act, 1985. On 19.06.2014 on reasonable belief that he had committed an offence punishable U/S 20 of chapter IV of NDPS Act, 1985 involving in carrying, concealing and transporting commercial quantity of ganja (cannabis). The grounds of arrest were duly communicated to him as well as intimated to his immediate family members. Subsequently, both the accused

were produced before the learned Chief Judicial Magistrate, Kamrup (M) on 20.06.2014 and were accordingly remanded to judicial custody.

3. Homogeneous sample in duplicate each weighing 24 gms were drawn from each of the 36(thirty six) packages containing ganja and sealed in presence of both the accused persons and the two witnesses. The sample so drawn were sent to the Director-cum-Chemical Examiner FSL, Kahilipara Guwahati vide office letter under C.No. VIII(10)/06/NARC/AS/GAU/2014-15/3473 dated 20.06.2014 for chemical examination. The Director-cum-Chemical examiner vide Report No. DFS 1199/2014/1071/DN-189/2014 dated 25.06.2014 communicated vide his letter No. FSL 1199/2014/497 dated 27.06.2014 reported that the exhibit gave positive test for cannabis. The report of arrest and seizure were submitted to the higher authority under the provisions of Section 57 of NDPS Act, 1985. Sri Sanjib Kumar Das, Inspector was appointed as investigating officer of the instant case vide order dated 19.06.2014 communicated vide C. No. VIII(48)01/ET/AS/GAU/2012-13 dated 19.06.2014. Subsequently, summons U/S 67 of NDPS Act, 1985 were issued to Durg Vijay Yadav, owner of the seized truck to his permanent and current address as S/O Sri Nand Lal Yadav, Village: Rampur, Kamhariya Dist: Azamgarh Uttar Pradesh and S/O Sri Nand Lal Yadav, Vill: 244 Pahasi, Phoolpur, Allahabad, Uttar Pradesh, vide C. No. 03-CL/NARC/AS/GAU/2013-14/3509 dated 23.06.2014 and C. No. 03/CL/NARC/AS/GAU/2013-14/3510 dated 23.06.2014 respectively. But both the summons were returned back by the postal authority as they failed to trace out the address of said Sri Durg Vijay Yadav. Subsequently, during enquiry it was found that there was no person by the name of Ashik Yadav S/O: Kanhailal Yadav residing at vill: Bitari PS: Marwadi Varanasi, Uttar Pradesh. However, one person by the name of Sri Ashok Yadav S/O Sri Kanhaiya Lal Yadav was found in the said address but he happens to be a carpenter by profession not a driver; address of Sri Pintoo Kumar was verified and found to be correct. However, address of Durg Vijay Yadav, owner of the seized truck was also verified and it was found to be faked.

4. Thus, alleged both the accused persons directly or consciously involved in illicit trafficking of commercial quantity of cannabis under seizure. Both the accused persons faced the trial from behind the bars; they are furnished with the copies of relevant documents. Thereafter, my learned predecessor in court having heard learned counsel of both the sides and basing upon the materials on

record framed two separate charges U/S 20(b)(ii) (c) of NDPS Act, R/W Section 29 of NDPS Act and read over and explained the contents of the allegation to both the accused persons to which they pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION:

5. In the instant case it is to be determined if on 19.06.2014 the accused persons were possessing/transporting ganja of commercial quantity in contravention of the provision of NDPS Act, ; to prove the case. The prosecution has examined as many as 11 witnesses. After the process of recording evidence of the witnesses so adduced from the side of prosecution was concluded, both the accused persons were subjected to examination as warranted U/S 313 of Cr.PC. Their plea is of total denial and false implications. It is seen that on each and every question their answer remained typical; they just denied everything. They do not even admit the fact that they were the driver and handyman of the vehicle and on that early morning they were detained at Baihata Chariali with the vehicle in question by customs officials ; they take no specific plea in their defense. I have heard the argument so advanced by learned counsel of both the sides, considered the evidence on record and come to the following decision

DECISION AND REASONS THEREOF

6. From the complaint petition, it has appeared that one Khetrinmayun Ramesh Singh was the seizing officer in the instant case; now let us start our discussion with the evidence of this witness. He was examined by prosecution as PW3 ; in his evidence he has stated that on 19.06.2014, he was working as Inspector, Anti-Smuggling Unit, Custom Division, Guwahati. On that day, they detected ganja from a truck bearing registration No. UP-70-DT-3635, on the basis of specific information received by Sri Ridip Hazarika the then Inspector. He has further stated they detected 36(thirty six) packages of ganja from the secret chamber in front portion of truck and which was seized on that day. The said team comprised of two Superintendents namely Sri D.C. Bania and Dr. S Roy, 5 (five) Inspectors namely Sri Ridip Hazarika, Sri S.S Basumatary, Sri P.K. Deka, Sri M.I. Singh and PW3 himself and they along with two sepoy's namely Sri N. Mandal and Sri T. Kamraju rushed to Baihata Chariali by their office vehicle at

around 10.30PM on 18.06.2014 on the basis of information received by Sri Ridip Hazarika. After reaching Baihata Chariali they started to proceed around 1km towards Rangia side and started keeping surveillance on all closed body container truck coming from Tezpur side. Thereafter, they requested some persons to be witnesses but they refused to do so at around 4.30AM, they saw a closed body container truck coming from Tezpur side which was matched with the information they received. So they signaled the truck to stop and the said truck was stopped. On being enquired by Superintendent D.C Bania, the driver of the said truck introduced himself as Ashik Yadav and he told them that the truck was empty. On asking he further told that they were proceeding towards Nalbari and the other assistant, who was present in the truck at the time of interception, introduced himself as Pintoo Kumar and he told the custom officials that he was the assistant of the truck. Then Superintendent D.C Bania, told them that they had intercepted the truck on receipt of secret information that it was transporting a consignment of ganja concealed in a secret chamber built in the front portion of the closed body container truck and that they wanted to check the container truck. The superintendent further requested the driver of the said vehicle to bring the said truck to the Custom Office, Guwahati; the driver agreed. Thereafter, the driver of the truck drove the said truck to the Custom Office at Guwahati and rest of the team members arrived at Custom Office at around 5.30AM on 19.06.2014. After reaching there the Superintendent D.C Bania called two independent witnesses who were present at that time in that office. Then Superintendent D.C Bania asked the driver of the truck about the transportation of ganja in a secret chamber built in front portion of the closed body container truck and the vent through which the packets containing ganja were secreted in presence of two independent witnesses. Thereafter, they observed that the vent was covered by tin sheet which was held together by four nuts. Then the driver opened the tin cover by removing the four nuts in presence of witnesses with the help of wrench available in his driver cabin. After removing the tin cover they had seen the secret chamber and observing they found that it contained several rectangular HDPE and gunny bag packages concealed inside the secret chamber. Then one such package was removed in presence of both the accused persons namely Ashik Yadav and Pintoo Kumar as well as in presence of witnesses. On examination it was found that the packages contained ganja on compressed form. Then all the packages (36 nos) which were found inside the secret chamber were removed from the truck and physically checked in presence of the

accused persons and witnesses and it was then found all the packages contained ganja. After checking they took weighment of each of the packages in electronic weighing scale of Anti-Smuggling Unit in presence of the accused persons and witnesses and weight of each package was entered in the weighment sheet. After weighment he was as seizing officer of the case then seized all the 36 (thirty six) packages of suspected ganja found in the secret chamber of the truck No. UP-70-DT-3635 along with the documents related to the truck. He proves exhibit 4 as office order dated 19.06.2014, passed by Superintendent D.C Bania, whereby he was appointed as seizing officer. Sri Sanjib Kr. Das was appointed as Investigating Officer. He further proves exhibit 5 the weighment sheet dated 19.06.2014, with his signature there on with seal. On weighment of 36(thirty six) packages contained 1056.50Kg of suspected ganja. He was assisted by Inspector M.I. Singh, Inspector Ridip Hazarika and Inspector S.S. Basumatary. He further proves exhibit 6 the inventory of goods, seized on 19.06.2014 in presence of accused persons and witnesses. After seizing the articles they took samples in a duplicate from each of the 36(thirty six) packages weighing 24 gms, in presence of witnesses and the accused persons . Thereafter, they deposited the goods to Disposal Unit, Customs Division at Guwahati on 19.06.2014 vide exhibit 7 godown receipt dated 19.06.2014. Thereafter, recording statement of the accused persons by the office, he formally arrested both the accused persons. He has further stated besides ganja they seized the truck bearing registration No. UP-70-DT-3635, documents detailed in annexure A and 3 (three) nos of mobile phone. On 19.06.2014, personal search was conducted upon Ashik Yadav and Pintoo Kumar and before that both the accused persons were requested to give their option on conducting personal search in presence of Gazetted officer or a Magistrate. Both the accused persons gave their option to search before a Gazetted Officer. He further proves exhibit 8 and 9 as the option letters U/S 50 of NDPS Act, given to the accused persons in presence of Superintendent Dr. S. Roy, who affixed his signature on those papers as exhibit 8(1) and exhibit 9(1). This witness further proves his signature on those documents as exhibit 8(2) and 9(2). After conducting search in presence of Superintendent Dr. Satyendra Roy the seizing officer as PW3 found Rs. 7,000/- (Rs. Seven thousand) from accused Ashik Yadav and Rs. 6,500/- (Rs. Six thousand five hundred) from accused Pintoo Kumar. He further proves exhibit 10 and 11 as the documents related to recover of money from both the accused persons under his signature with seal and signature of Superintendent Dr. Satyendra Roy with seal. He has further stated

after drawing of samples, they forwarded it to FSL, Kahilipara, for chemical examination on 20.06.2014 along with test memo with exhibit 12. The office letter regarding forwarding of samples for chemical examination under signature of Dr. Satyendra Roy, Superintendent vide exhibit 12(1) with seal. He has further proves exhibit 13 the test memo regarding forwarding memo with his signature as exhibit 13(1). After depositing the samples FSL, Kahilipara issued receipt dated 20.06.2014 regarding receipt of the samples forwarded by Custom Department for chemical examination in connection with Case No. 03/CL/NARC/AS/GAU/2014-15 dated 19.06.2014. He has further stated that he informed his superior authority on the seizure and arrest of accused persons vide exhibit 15 in form-F with his signature as 15 (1) with seal and signature of Superintendent of Dr. Satyendra Roy as exhibit 15(2) with seal . It may be noted at this stage when this witness was examined at the court all the seized articles, 36 (thirty six) packages contained cannabis and the sample examined by FSL which were forwarded to the office were produced before the court on that day. He has further proved material exhibit 3 to 38 as the packages contained cannabis (ganja) having signatures of the accused persons, seizing officer and witnesses including case No. and packages no. He has also proved exhibit 16 the inventory prepared U/S 52 of NDPS Act, with his signature exhibit 16(1) and 16(2) with seal. He has further proves exhibit 17 the forwarding letter of inventory U/S 52 of NDPS Act, with his signature and seal as exhibit 17(1). He has denied the fact that the label which were fixed on the body of material exhibit 3 to 38 were fixed at later stage. However, he has admitted that on the body of material exhibit 3 to 38 there was no signature of the accused persons, seizing officer and witnesses but labels were pasted on the exhibit which contained the signature of the accused persons, seizing officer and witnesses with seal and signatures of learned Chief Judicial Magistrate. Upon attentive analysis of the evidence of the witness it has surfaced that the place of interception of the truck near Baihata Chariali is located about 30/40 Km from Customs Office, Christan Basti, Guwahati. It took about 45 minutes to take the truck from Baihata Chariali to the Customs Office, Christan Basti, Guwahati. At the time of interception of the truck, there were no independent witnesses present at the place. However, the fact remains that from his evidence, it stands established that before interception the customs official approached several persons and told them about the information and requested them to be witnesses of the whole operation ; but all of them refused to do so and left the

area without disclosing their names and address. This part of the testimony of PW3, is believable as the operation was started in the late night and from the evidence it has appeared that the custom officials started surveillance about 1km far from Baihata Chariali towards Rangia side and it continued till 4.30 AM and in such circumstances, the nearby people would naturally be reluctant to help the custom officials and to remain present at the time of interception of the truck. The place of interception was an open space ; on both the sides there was no shop or any other business establishment. He has further asserted that detail time in the process of search was mentioned in the exhibit 16, the inventory. This witness further admitted in exhibit 16 the inventory, it is mentioned that the dry plant was seized. However, mode of packet, color of packet and any specific mark of identification of those packets were not mentioned. It may be noted at this stage that the customs officials recovered 36(thirty six) packages from the secret chamber of the vehicle in question and the packets were also exhibited before the learned court of Chief Judicial Magistrate, as such no doubt arise as regards the numbers of package which custom officials seized on the eventful day. Though, this witness admitted that in exhibit 6, the search and seizure memo, it was not mentioned that the sample of seized ganja were drawn in presence of the accused persons and the witnesses but the fact remains that the accused persons put their signatures on that particular documents and also affixed their signature thereof; so it has no adverse bearing on the admissibility of exhibit 6, it does not cast any doubt regarding authenticity of this document. It has also not any important that facsimile of the department seal used on the seized packets are not mentioned in the exhibit 6. It has also no adverse bearing on the point that this witness did not give detail description of the mobile phone handset in exhibit 6. It has further surfaced that on exhibit 5, weighment sheet the accused persons affixed their signatures so there is no question to doubt its authenticity in the premises of the submission of the defense counsel that the signatures of the accused persons on this papers were obtained at later stage; though it is admitted by this witnesses he did not seize the instrument/apparatus used for opening of the secret chamber of the truck where the alleged contraband ganja were found; it need not be given much significance as from the evidence of this witness, it stands established that whole truck was seized by the customs department. He has further admitted that he has not seized driving license of the accused and this matter was strongly hammered by the defense side. This court is of opinion that only because of the fact that the driving license of the accused

was not seized the entire prosecution case could not be doubted as it may happen that the accused Ashik Yadav was not having any driving license or at that time he was under custody of the Customs Department, he has silently parted away with the driving license. From his evidence it has further emerged that all the samples of the packets of seized contraband were kept in the custody of Superintendent till those were forwarded to FSL, Kahilipara for chemical examination. He has further admitted that facsimile of the seal put on the packets of the sample was given "in NCB-1 for identification" while forwarding the samples to FSL, Kahilipara, Assam. However, facsimile of the seal used on the packets are mentioned as "A.S. Unit Customs Division, GUwahati". He denied the suggestion that he did not comply with the requirement U/S 50 of NDPS Act, by informing accused persons that they had right to be searched in persons in presence of a Magistrate or a Gazetted officer. He has flatly denied that no ganja was recovered and seized out of the truck of the accused persons the implied meaning of this suggestion goes to show that the truck seized by the Custom Division was used by the accused persons. So no reply of the accused persons as regards to the fact of the truck being detained by the customs officers and search made thereunder loses its significance. Evidence of PW3 stands corroborated from the evidence of the rest of the PWs.

7. PW1 is Sri Purnya Kr. Deka, Inspector Anti-Smuggling-Unit Custom Division and he in his evidence has stated that on 18.06.2014 Superintendent D.C Bania informed him that he received a secret information that a truck carrying ganja was coming from Mangaldoi side towards Baihata Chariali. Accordingly, a team comprising of Dr. Satyendra Roy Superintendent, Ridip Hazarika, Inspector, Shiv Sankar Basumatary, Inspector, Ramesh Singh (Seizing officer), Inspector, M.I. Singh, Inspector, Sanjib Kr. Das (Investigating Officer) including of PW1 was formed at about 10/10.30 PM. This team left the office at Christan Basti, Guwahati to Baihata Chariali. This team stopped on the road side at a distance of 1^{1/2}Km (one and half Kilometer) from Baihata Chariali at Natioal Highway 31 towards Rangia side. On the next early morning at about 4.30 AM a six wheeler closed body truck bearing registration No. UP-70-DT-3635 was seen coming from the Mangaldoi side towards Baihata Chariali. Accordingly, on the instruction of Ridip Hazarika, Inspector, they stopped the vehicle they found the accused persons inside the vehicle. The driver of the said vehicle informed them that the truck was empty and nothing was carried. However, as because the truck

was matched with secret information, they took the vehicle to Customs Office at Christan Basti, Guwahati. On search in the truck they found one secret chamber under the body of the truck and on search in the secret chamber they found 36(thirty six) numbers of HDPE bags. They brought down all the packets from the secret chamber of the truck in presence of two independent witnesses and the driver and the helper. On opening the packets they found loose packets containing suspected ganja in compressed form. Thereafter, Inspector Ramesh Singh made weighment of the ganja on the spot in their presence and in the presence of two independent witnesses and the accused persons. On weighment they found net 1056.50Kg of ganja. Then PW3, Ramesh Singh collected samples of seized ganja totaling 72(seventy two) packets each containing 24 gms. The samples were collected and packed in duplicate for chemical analysis. This witness prepared exhibit 1, the panchnama, in the presence of independent witnesses with his signature as exhibit 1(1). He did not put his signature on the search and seizure memo. The vehicle was not searched at the spot where it was stopped. The said vehicle was driven by accused Ashik Yadav. Upon attentive analysis of the evidence of this witness, it has emerged that this witness corroborated the witness of PW3 on the point that there was no public witness at the place where the vehicle was detained. He denied the fact that at the time of preparation of Panchnama accused persons were not present there, nor the independent witnesses.

8. Now we come to the evidence of PW 4. He is Sri Ridip Hazarika, Superintendent of Custom Division and he corroborates the evidence of aforenmaed two witnesses by stating inter-alia that on 18.06.2014 at around 1900 hrs on receipt of a specific information to the effect that a huge quantity of ganja will be loaded in a secret chamber, specifically built in the front portion of the closed body container truck bearing registration No. UP-70-DT-3635 near Udalguri area around midnight. He immediately reduced the information in writing and forwarded it to Superintendent D.C Bania. After getting such information Superintendent D.C Bania formed a team comprises Superintendent Dr. S. Roy, 5 (five) Inspectors namely S.S. Basumatary, Sri P.K Deka, Sri M.I. Singh, PW4 Ridip Hazarika along with two sepoy's namely Sri N. Mandal and Sri T. Kamraju and then started proceeding towards Baihata Charilai and on reaching there, started keeping surveillance on all closed body container truck coming from Tezpur side. He also corroborated the testimony of PW1 and PW3, on the

point that before interception they approached several persons and told them about the information and requested them to be witnessed of the whole operation but all of them refused to do so and left the area without disclosing their names and address. Thereafter, they continued the surveillance and in course of that operation they noticed one closed body container truck coming from Tezpur side which matched with the information they received. Thereafter, on being signaled the truck was stopped and on closer observation, they found the truck bearing registration No. UP-70-DT-3635 then they enquired about the loaded goods in the container truck the driver of the truck told them that it was empty and there was nothing in that truck then custom officials informed Ashik Yadav that they intercepted the said truck on receipt of secret information of huge quantity of ganja be loaded in a secret chamber in a specifically build in the front portion of the container truck; then on being request accused Ashik Yadav drove the vehicle to the Custom Office at Christan Basti in presence of customs officials and witnesses accused Ashik Yadav showed them the secret chamber and on close observation it was found that the chamber was closed by a vent which was hold together by four nuts. Thereafter, on being asked both the accused persons opened the vent in presence of witnesses and it was found of several packed rectangular HDPE and gunny bag packages were concealed inside the secret chamber. Thereafter, they removed all the 36(thirty six) nos of packages from the secret chamber and on examination found all the packages were estimated at 1056.50Kg; the recovered quantity of ganja along with the truck No. UP-70-DT-3635 was then seized under the provisions of NDPS, Act. The accused persons handed over their mobile phone registration certificate of the vehicle was also seized; samples in duplicate were drawn from each of the packets in presence of Ashik Yadav and Pintoo Kumar and witnesses and those packets were sealed for testing at laboratory. This witness has further proved exhibit 8. The information he received on 18.06.2014 which he reduced into writing under his hand vide exhibit 18(1); he further proves exhibit 18(2) the signature of Superintendent D.C. Bania who instructed him to form a team. I have subjected the evidence of this witness to critical analysis and I have found, that this witness in his evidence has further stated that the size of the secret chamber/cavity was not mentioned in the inventory. It is not significant as the entire truck was seized by the custom department. This witness has further denied that the exhibit 18 was prepared on 19.06.2014 and he has also denied that there was overwriting on the date. I shall address this aspect of this matter

at an appropriate stage. He has further denied that the exhibit 18 was prepared after search and seizure at the office by him. He has further admitted that after receipt of information of aspect informing the Superintendent, he had not informed other higher authority; now the question is whether it is mandatory ; that aspect of the matter will be addressed at an appropriate place.

9. Coming to the evidence of PW2 we have found that this witness Dr. Dhrubajyoti Hazarika was working as Deputy Director in the Drugs and Narcotics Division, Director of Forensic Science, Assam. He in his evidence has stated that on 20.06.2014 he received a sealed parcel in connection with Case No. 03/CL/NARC/AS/GAU/2014-15 dated 19.06.2014 for examination. The said parcel consists of 36(thirty six) exhibits enclosed in a sealed carton box. The facsimile of the seal was found to be "AS UNIT CUSTOMS DIV GHY". Those 36(thirty six) sealed envelopes, were marked as "04(01) to 04(36)" with closed polythene containing 24 grm dry plant materials each marked as DN-189/2014 (a) to DN-189/2014 (a-36).After examination this witness has found of exhibit 189/2014 (a) and DN 189/2014 (a 36) gave positive tests for cannabis(ganja). He further proves exhibit 4 his report under his signature as exhibit 2(1). The said report was forwarded to the then Director Mr. M.N Bora, which this witness knew. He has further stated that after completion of necessary examination the remnant of the samples was sent back to Anti-Smuggling Unit, Custom Division , Guwahati vide forwarding letter No. 1199/2014/497 dated 27.06.2014. He has further stated that the seal which he affixed in the exhibits were all intact and those were produced before in the court at that time when he was examined and he has affirmatively stated that those were the same exhibits. He has further proved material exhibit 1 as the envelope containing the 36 exhibits. He has also proved material exhibit 2 the yellow tag by which all the 36 samples were sealed and the initial put in the yellow tag is marked as material exhibit 2 (1). He has further stated that after breaking the seal in the presence of the court and the learned counsel for the complainant the seal impression found in material exhibit 2 matched with the seal impression described earlier under exhibit 2. He has further taken weighthment of the received exhibit in sealed covered and found 24 grm in each exhibits. However, he did not return back the carton bags in which the exhibits sent and received by the FSL authority. Thus, from his evidence it stands established that he received 36 sealed envelopes containing the exhibits

and after examination he found that all the exhibits goes positive test for cannabis.

10. Now we come to the evidence of PW5 Dr. Satyen Roy, Superintendent of Custom Anti-Smuggling Unit, Guwahati. He in his evidence has stated that on 18.06.2014 he was working as Superintendent Anti-Smuggling Unit of Custom Division, Guwahati and on that day at around 1900 hrs on receipt of specific information by Inspector Ridip Hazarika, to the effect that a huge quantity of ganja will be loaded in a secret chamber specifically built in the front portion of a container truck bearing registration No. UP-70-DT-3635 near Udalguri area around midnight. It was intercepted by crossing Baihata Chariali at around 3 to 4 hrs of 19.06.2014. The information was reduced into writing by Inspector Ridip Hazarika and it was submitted to Senior Superintendent D.C. Bania on 18.06.2014 at around 19.30 hrs. Immediately, a team was formed comprising Superintendent D.C. Bania, PW5 Dr. Satyen Roy, Inspectors namely Ridip Hazarika, Sri P. K. Deka, Sri S.S. Basumatary, Sri R. Singh, Sri M.I. Singh along with two sepoy's namely Sri N. Mandal and T. Kamraju, then they started from the office at around 22.30hrs in their departmental vehicle AS-01-AF-0805. They reached Baihata Chariali at around 2330 hrs. From Baihata Chariali they proceeded towards Rangia side covering a distance of 1Km and selected a place for naka. At that time some of the people gathered there and then they requested to be witness of the operation giving the details of information, but no one come forward to stand as witness. So they placed naka there and keep surveillance of all closed body container truck coming from Tezpur side. During the surveillance at around 04.30 hrs on 19.06.2014 they stopped one closed body container truck as it was matched with the information they received then the officers signaled the said vehicle to stop. After the vehicle was halted the customs officers introduced themselves and enquired about the goods carrying then the driver introduced himself as Ashik Yadav and he told them that the truck was empty and was going to Nalbari side. Another occupant was also there, his name was Pintoo Kumar, and he introduced himself as assistant of the truck. Thereafter, they told the driver that they had specific information that the said truck was carrying a huge quantity of Ganja in a secret chamber and requested the driver to bring the truck to the office complex situated at Nilamani Phukan Path, Charian Basti, Guwahati. At that time one Inspector M.I Singh and sepoy T. Kamraju got into the intercepted truck and on suspicion the truck was brought

to the office. They all reached office at 5.30 AM on 19.06.2014. At that time some media persons were present there after receiving the information. So, Senior Superintendent requested them to be witness the whole operation. They agreed and at around 6.30 AM the customs officials asked the driver to go to the details of the upper portion of the truck and the officers opened the hood of the truck in presence of accused Ashik Yadav. In the front portion of the truck there was a tin shed hold with four nuts on being asked accused Ashik Yadav opened the sheet and then a secret chamber was noticed and it was found that there were some rectangular shaped packets along with some gunny bags. All the packets were unloaded. There were total 36 numbers of packets and on examination it is found that all the packets contains dark green levels suspected to be ganja. All the packets were well marked i.e. 1 to 36 and weighment was done in presence of the driver, assistant and individual witness and on weighment the total quantity of ganja was found 1056.50Kg. He proves the exhibit 5 the weighment sheet, wherein his signature and he proves it as exhibit 5(2) with his seal. Thereafter, all the packets and related documents of the truck voluntarily handed over by accused persons which were seized. Thereafter, a case was registered vide No. 03/CL/NRC/AS/GAU/2014-15 dated 19.06.2014 at around 10.30 hrs. Thereafter, 24 grm of samples were taken from each packets in presence of accused person and the independent witnesses. After taking samples goods were deposited in godown on 19.06.2014. Thereafter, after production of accused persons before the Learned Chief Judicial Magistrate on 20.06.2014. This samples in one packet in sealed condition and sent it to the Deputy Director, FSL, Assam on 20.06.2104 along with test memo. He proves exhibit 12 the sample forwarding letter accompanied by a test memo in connection with Case No. 03/CL/NARC/AS/GAU/2014-15 dated 19.06.2014. He has further stated that the submissions of both the accused persons were recorded vide exhibit 19 and 20. He has admitted that he did not put his signature on exhibit 6, the inventory. However, the signatures of the accused persons were taken on the sample packets of seized contraband. He has further admitted that in exhibit 6, the inventory of goods, the seizing officer did not mention the color of the bag, mode of the bag, nature of quantity and specific mark of the seized goods. He has further admitted that sample packets of the seized ganja were not deposited with the godown in-charge of NCB and in the godown of the Custom Department. The samples remain in his custody from the time these were recovered and seized and produced before the learned CJM and

also till dispatch dated 20.06.2014 to FSL for chemical examination. He denied that the search and seizure memo was not produced before the learned court on 20.06.2014. He has further denied that the search and seizure memo was prepared at the time of filing the complaint. He has further admitted that the seal put on the samples packets for identification as mentioned in NCB -1. Further he denied that the facsimile of the seal forwarded along with the test memo was not similar to the facsimile of the seal forwarded along with the sample packets. He has further admitted that the exhibit 19 and 20 statements of the accused persons were recorded in the absence of witnesses. He has also admitted at the time of interception of the truck there was no independent witness along with them near Baihata Chariali. He has further admitted that no sketch map of the place of detection was drawn by search and seizing officer at the time of interception of the truck.

11. Now evidence of the rest of the PWs goes on the same line they all supported the version of each other on the point that on 18.06.2014 Superintendent D.C. Bania at the instruction formed a team of custom officers and they all left for Baihata Chariali to pursue the specific information regarding transportation of Narcotics in a truck they all reached at Baihata Chariali and waited for the truck. The truck reached on 19.06.2014 at about 4.00AM the said truck was stopped subsequently, the truck was brought to custom Office and in the presence of two independent witnesses and the accused persons the custom officials conducted search in that truck; the secret cavity was found where 36 packages of ganja were kept; the weighment of the said ganja was taken in their presence. Thereafter, inspector Ramesh Singh seized the recovered ganja of 1056.50 Kg along with the truck and list of seized goods were prepared by the seizing officer; two samples were duplicate from each of 36 packages of ganja; statement of the accused persons were recorded.

12. Now we come to the evidence of PW8, Dwipen Bania. He was working as Superintendent of Customs, Anti-Smuggling Unit, Guwahati according to him, on 18.06.2014 Ridip Hazarika Inspector, passed an information from reliable source which was reduced into writing. Information was that one truck bearing registration No. UP-70-DT-3635 carrying suspected ganja in a secret chamber was coming from Tezpur side. Thereafter, a team of customs officers was constituted then at around 11/11.30 PM they all proceeded towards Baihata Chariali on 18.06.2014 in their departmental vehicle. After reaching Baihata

Chariali they proceeded to Rangia side covering a distance of about 1km; they started keep surveillance on all closed body container truck coming from Tezpur side. After laying naka they approached several persons and asked them to be witnessed to the whole operation but all of them refused and left the area. Thereafter, at around 4.30 AM they saw a closed body container truck which matched with the secret information they received. Thereafter, they stopped the truck interrogated the accused persons who were found in the vehicle and asked them to bring the truck to the office of Custom. Accordingly, the truck was brought to the Office at Nilamani Phukan Path, Christan Basti, Guwahati-5 at around 5.30 AM the team of officers all reached the office then they called two independent witnesses and requested them to witness of search and seizure. The secret cavity could not be detected from outside. However, after thorough search the driver/accused Ashik Yadav showed them where the secret cavity was located on the back side of the driver seat and the said cavity was closed by a vent which was hold together by four nuts. Thereafter, on being asked accused persons in presence of custom officers and independent witnesses of opening vent of the secret chamber; and on opening the vent of the secret cavity and on examination of the cavity it was found several packets of rectangular shaped HDPE and gunny bags packages were concealed in the secret chamber. Thereafter, they removed all the 36 packages from the secret chamber of the truck. On measurement the length of the secret cavity to be found 8 ft. 2 inch, breath 2 ft and height 8 ft. On examination of the packages were found to have contained Ganja in compressed form each packages were weighed in the electronic weighing scale in presence of the independent witnesses the net weight of Ganja contained in the 36 packages were estimated at 1056.50 Kg. Thereafter, the recovered ganja along with the truck was seized the weight of each packets was entered in a weighment sheet where both the accused persons affixed their signatures. Thereafter, 36 samples in duplicate were from each of the packets, weighing 24 grm each, in presence of the accused persons and this packets were sealed for testing at laboratory. Statements of both the accused persons were recorded. He has proves exhibit 18 the information forwarded to him by Inspector Ridip Hazarika, He proves exhibit 18 as his signature dated 18.06.2014. He has further proves exhibit 18(1) the signature of the Inspector Ridip Hazarika. He has further appointed K. Ramesh Singh, as seizing officer of the case and Sanjib Das, the investigating officer of the case. He proves exhibit 4 the said office order dated 19.06.2014, He has further stated

that he authorized Inspector Ridip Hazarika to form a team of customs officers and staff to pursue the secret information. He was present at the time of search and seizure; but he did not put his signature. He has further admitted that the seizing officer did not seize four nuts from the secret cavity; as according to him, the whole truck was seized in connection with the case. He denied that the departmental seal impression affixed on the sample and seized materials is not mentioned in Panchnama and inventory of the goods seized. He denied that no independent witness was present at the time of search and seizure process. He further denied that the department seal was not put on the 36 samples collected from all 36 samples in duplicate.

13. Now we come to the evidence of two independent witnesses, they are PW 9 Dibyojyoti Rabha and PW10 Pallab Kr. Bora. Let us first discussed the evidence of PW9, Dibyojyoti Rabha. The evidence of PW9, he was working as correspondent of vernacular daily "Niyomiya Barta". He in his evidence has stated that on 19.06.2014 at about 5.30 AM he received an information that one truck was apprehended by the customs and the said truck was brought to their Office at Christan Basti, Guwahati. On getting this information, he rushed to the Customs Office and found the truck empty. At that place, he met DC Bania Superintendent of Customs, who informed that the ganja were carrying in a secret chamber of the said truck. At that time PW10, staff reporter of "Anandabazar Patrika", Sri Pallab Kr. Bora was also present there. Thereafter, customs officers opened the secret chamber of the truck, located under the set of the driver of the truck; it was made of steel plate. The custom officers took out some packets warped with polythene; there 36 packages were found in the secret chamber of the truck when one of the polythene packets was opened, it was found containing some ganja like substances. Thereafter, custom officer made weighment of the recovered ganja and found containing total 1056.50Kg. Then the custom officer collected the samples out of the recovered suspected ganja from each of the packages. During such search both the accused persons as well as PW10 was also present there. He proves exhibit 5(3) as his signature under exhibit 5 the weighmnet sheet. He further proves exhibit 6(4), 6(5) and 6(6) as his signatures on exhibit 6 the inventory of goods. He has very specifically stated that the search and seizure was conducted in his presence. He further proves the exhibit 1 the Panchnama. He has admitted in his evidence that exhibit 6, the inventory the color of the truck and the colour of the secret

chamber were not mentioned . He has further admitted that he has put his signature on the documents at the room of Custom Officer at Christan Basti. He has flatly denied that he has tendered evidence before the court as tutored by the Customs Officers. He has also denied that no ganja was recovered and seized by custom officers from the seized truck in his presence.

14. The last witness examined from the side of the prosecution is PW10, Pallab Kr. Bora, He in his evidence has stated that on 19.06.2014 at about 5.30 AM, he received an information that a truck was intercepted by the customs and the said truck was brought to their officer at Christan Basti, Guwahati. On receipt of this information he rushed to the custom office at Christan Basti, Guwahati and found one empty truck was parked within the office campus of the Custom Office. There were many Customs Officers and staffs at that place. He had also seen some of the custom officers trying opened the secret chamber of the truck located under the seat of the driver of the truck. On opening the secret chamber many sealed packets in rectangular size were found. Thereafter, all the recovered 36 packets were taken to the second floor of the Custom Office. These packets were opened by custom officer in his presence and in the presence of the accused officers. One of the packets were taken by himself for weighing then he had seen ganja like substance in the recovered packets then he made a videography of the entire process of search and recovery of suspected ganja. Custom officers prepared one Panchnama and requested him to stand as witness to the search and seizure process to which he readily agreed. Thereafter, the customs officers collected the samples of the seized samples and asked him to put his signature on the Panchnama. Accordingly, he put his signature on the Panchnama as exhibit 1 which he was proved as exhibit 1, (8),1(9), 1(10) and 1(11) and he has further proves his signature on exhibit 5, the weightment sheet as exhibit 5(4), on exhibit 6 seizure memo as exhibit 6(7) and 6(9), exhibit 16, the entire seizure memo U/S 52 (A) of NDPS Act, as 16 (5) 16(6). He has admitted that neither he himself nor the custom officials has given any certificate in exhibit 1, that the exhibit 1, the Panchnama was prepared by customs officer in his presence. He denied that on receipt of secret information he did not go to custom office at Christan Basti or stood as witness in the entire process of search and seizure.

15. During argument stage, the learned defense counsel has contended that there are serious contradictions in the evidence of the PWs. According to him,

PW1 in his evidence has stated that on 18.06.2014 Dwipen Ch. Bania, Superintendent of Customs informed him that he had received a secret information that a truck was carrying ganja was coming from Mangaldoi side towards Baihata Chariali. It is accompanied by PW4 Ridip Hazarika who has stated that on that day he had received the secret information regarding loading of ganja in a closed body container truck. This contradictory version of the PWs creates a doubt whether there was any specific information and if so, by whom it was received. Furthermore, PW1 in his evidence has clearly stated that PW 4 Ridip Hazarika did not receive any secret information as exhibited in 18.

16. It is further submitted by the learned defense counsel that there was complete non compliance of section 42 (2) of NDPS Act. Again the learned defense counsel in course of cross-examination PW4 admitted that at what time the information was received and what time the same was reduced into writing was not mentioned in exhibit 18. It is further submitted that in exhibit 18 the date under the signature of PW4 is found overwritten. It is also contended that exhibit 18, reveals that exhibit 18 was subsequently, prepared on 19.06.2014 after completion of search and seizure process. In addition to the above, PW8 in his cross-examination supporting PW4 as stated that at what time the information was received and reduced into writing by PW4 was not mentioned in exhibit 18 and what time the same was dispatched to PW8 was also not mentioned in exhibit 18. Thus, from the evidence of PW1, PW4 and PW 8, a doubt is created whether there is any specific information about carrying of ganja by offending truck. If any, information was there by whom it was actually received and at what time it was received. There is no specific clarification from the prosecution side. Rather, prosecution witness No. 1 and 4 contradicted each other in their evidence regarding receipt of secret information. PW8 stated in his evidence that he had not informed his higher authority about the secret information received from PW4 which is mandate of Section 42(2) of NDPS Act. Thus, from the evidence of the PWs it is crystal clear that none of the PWs including PW4 had complied the statutory provision of section 42(2) of NDPS Act, and there by vitiate the prosecution case.

17. In support of such contentions, the learned defense counsel has placed before this court the following judgments:

1. Dilip and another V/S State of MP 2007(1SCC 450).

2. Abdul Rashid Ibrahim Mansuri V/S State of Gujrat (2000)2 SCC 513.
3. Raju Premji V/S Customs NER, Shillong Unit (2009) 16 SCC 496.
4. Prantosh Paul and Ors V/S State Of Tripura 2014 (5) GLT (TR) 193.

18. To meet the contention of the learned counsel of the accused ,we have to revert back to section 42 (2), this sub section read as under "whether a officer takes down any information in writing under sub section 1 or records ground for his belief under the proviso there of, he shall within 72hrs send a copy there of to his immediate official superior".

19. The Hon'ble Gauhati High court in the case of Prantosh Paul and Ors V/S State of Tripura in para 35 has observed that effect of decisions rendering in Abdul Rashid and Sajan Abraham are as follows:

- (a) The officer on receipt the information of the nature referred to in sub-section 1 of Section 42 from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of Clauses (a) to (d) of section 42(1).

20. It is further observed by the Hon'ble Gauhati High Court that compliance with the requirements of section 42 (1) 42(2) in regard to write down the information received and sending the copy there of to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by reasonable period i.e. after search , entry and seizure. The question is one of urgency and expediency.

21. Come back to the evidence on record, on critical analysis it is found that the evidence of PW1 and PW4 is consistent and there is no contradiction. PW1 in his evidence has very categorically stated that PW8 D.C Bania received a secret information that a truck was carrying ganja; coming to the evidence of PW 8 it is found that he has vey categorically stated that on 18.06.2014 Ridip Hazarika PW 4, received a secret information and he passed that information to him by reducing it into writing. PW4 and PW8 has proved exhibit 18. Now let us see what this exhibit contains.

22. In this document a clear narrative is given as regards receipt of specific information that a huge quantity of ganja will be loaded in a secret chamber specially built in the front portion of six wheeler full body container truck bearing registration No. UP-70-DT-3635 and the said truck will move out of that region after loading of Ganja in the early hours on 19.06.2014 it is also noted herein that the truck was expected to cross Baihata Chariali between 3 to 4 AM, the body of the container was reddish in color and the cabin is yellowish. He reduced this information into writing and forwarded it to PW 8 and he gave his note on the top portion of this document showing to have received it at 9.30 PM on 18.06.2014 and he duly authorized PW4 Ridip Hazarika to take immediate action by forming a team of officers. Thus, there is total compliance of section 42 (2). It is further contended by the learned defense counsel that PW3 during his evidence before this court did not produce or exhibit the duplicate samples of packets which alleged to have been drawn from the seized contraband during the seizure process; that the duplicate samples were same part of the original samples which were sent to FSL, Kahilipara, Guwahati. In addition to the above, PW3, conducted personal search of the accused U/S 50 of NDPS Act after their arrest. By conducting personal search of the accused after the arrest, PW3 had violated the provision of Section 50 of NDPS Act. As per provision of section 50 of NDPS Act, when a person who is to be searched for possession of Narcotics drugs or for commission of an offence under the provision of NDPS Act, is to be apprised of his right U/S 50 of NDPS Act and he is to be informed that he has right to be searched before a gazetted officer or a Magistrate before whom any such person is brought shall if he see no reasonable ground for search forthwith discharge the person otherwise shall direct that search can be made of the said person. But in the present case it is contended that the seizing officer neither gives any option informing the constitutional right to be searched before Magistrate or Gazette officer nor have followed the provision of section 50 before conducting body search of the accused. In addition to the above PW3 admitted in his cross-examination that it is not mentioned in exhibit 6 (search and seizure memo) that the samples of the seized ganja was drawn in the presence of the accused persons and further what type of the facsimile of the departmental seal used on those packets of the sample. It was not mentioned either in exhibit 6 or exhibit 1, the Panchnama. It further contended that PW3 did not seized the Driving License of the alleged driver of the truck to prove that he was the driver of the said truck on the day of occurrence. Besides PW3 in his further

examination in chief admitted that he did not seized dismantled part the yellow color secret cavity and also did not take measurement of the secret cavity where from the alleged ganja was recovered. It is further contended that the PW3 admitted that he did not drawn up the sketch map of place of occurrence and at the time of interception of the truck the officer did not call any persons nearby place of occurrence to stand as witness. Though PW 3, claimed that he had prepared exhibit 15 within time but he admitted during cross that he had not produced the said exhibit before the Learned CJM at the time of producing the accused along with other documents to prove that the same was prepared and compliance to the superior authority within the required time as prescribed U/S 57 of NDPS Act. Apart from this the seizing officer PW3, conducted the seizure process without getting proper authority letter from the Superior Officer as authorized officer . Although, PW3 was appointed as seizing officer through exhibit 4, Office order but this document did not reflect that PW3 was appointed as seizing officer by issuing any authority letter to conduct the seizure process. Thereby, the seizing officer violated the mandatory provision of Section 42 of NDPS, Act. It is further contended that the PW3 being seizing officer did not comply with mandatory provision of sections 50 and 57 of NDPS Act, during search and seizure.

23. I have considered the submissions of the learned counsel with all attention and does not concur with the point raised by the learned defense counsel ; from the evidence of the PW3, the seizing officer it stands abundantly established that before making body search he issued notice U/S 50 of NDPS Act to both the accused persons. At the time of his examination both the notices were brought on the record. I have attentively gone through exhibit 8 and 9 and found that after recovery and subsequent seizure of 1056.50Kg of Ganja from the possession of the accused persons by officer of Anti-Smuggling Unit on 19.06.2014; the PW3, seizing officer informed both the accused persons that the personal search is required ; then he served a notice to both of them U/S 50 of NDPS Act, requested them to give their option whether they wanted to be searched in presence of Gazetted officer or before a Magistrate. These documents have revealed that both the accused persons have written in Hindi that they did not want their body to be searched by a gazette officer or Magistrate and they have no objection if their body is searched by the customs officers. Thus, there was complete compliance of section 50 of NDPS Act.

24. As regards none seizing of Driving License from the accused Ashik Yadav, it appears from the evidence on record that none of the witnesses has deposed that the accused was possessed with any Driving license. Rather, from exhibit 6 Annexure A, It is seen that the documents of the said vehicle were seized in presence of the accused persons who put their signatures on this document and from the evidence of the PW 9 and PW 10, it is stands established that they were present at the time when these documents were seized from the accused persons on that particular day. It may further be noted at this stage that the custom officers seized the vehicle in question in its entirety ; as such none seizing of the dismantled part of the said cavity does not affect the prosecution case in the least.

25. Though, it is agitated by the learned defense counsel that the measurement of the secret chamber was not taken but from the evidence of PW8, it is found that measurement of the secret chamber was taken and it was to be 8 ft 2 inch in length, 2 ft in breath and 8 ft in height.

26. It is further contended by the learned defense counsel that there was non compliance of section 52 (A) (2) of NDPS Act. According to the learned Defense counsel, PW3 in his examination-in-chief has stated that he prepared the inventory U/S 52 A of NDPS Act, which has been exhibited as exhibit 16 and he also exhibited forwarding letter of the inventory as exhibit 17, but in course of his examination he has stated that in exhibit 16 there is mentioned of dry plant seized without mentioning further details described into quality, mode of packing, color of the packets, marked and such other specific mark of identification as required U/S 52 A (2) of NDPS Act. Besides, under exhibit 6 it is mentioned only the dry plant suspected to be ganja without giving further description. It is also admitted that in the inventory exhibited as 16 it did not contain the signature of go down in-charge. Again PW3 stated that he did not obtain any certificate by submitting petition/application before any Magistrate that the contents of the inventory so prepared is correct and prepared in terms of requirement U/S 52 A (2) of NDPS Act. In support of such contention the learned defense counsel has relied upon the following judgments:

Sri Chanam Ranjit Meitei, Appellant V/S Union of India, Respondent, 2010(3) GLT 361.

27. I have gone through the cited judgment; I have also gone through exhibit 16 and the evidence of PW3; from exhibit 17 it is found that Ramesh Singh the seizing officer, PW3 made an application before the learned Chief Judicial Magistrate, for certification of correctness of the inventory photographs and samples of seized narcotics drugs and psychotropic substance. He has prayed to the learned court for certifying the correctness of the inventory, permit taking in presence of learned Magistrate, photographs of the drugs and substance in the inventory and certify such photographs as true and allow the drawing of representative samples in presence of Magistrate and certify the correctness of the list of all samples so drawn. Thus were found that there was total compliance of 52 A (2) of NDPS Act.

28. As regards non compliance of section 55 of NDPS Act, it is submitted by the learned counsel that PW3 in course of evidence has exhibited the godown receipt and claimed that all the seized goods were kept in disposal Unit, Custom Division on 19.06.2014 but godown receipt exhibit 7, does not reflect the facsimile of seal impression, case no and signature of the officer with seal who had deposited the seized goods to the godown in-charge. In the present case the seized 36 nos of packets which were exhibited in the court did not contain the signature of the officer-in-charge of the go-down and also did not contain the godown entry No, and date to prove the fact that the seized contraband were kept in malkhana /godown in proper custody of the godown in-charge as required U/S 55 of NDPS Act. This section provided as under " an O/C of a Police Station shall take charge of and keep in safe custody, pending the orders of Magistrate, all 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, may accompany such article to the Police or who may deputed for the purpose, to affix his seal to such article 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 PS. It is contended the learned defense counsel that the object of Provision of section 55 is that officer-in-charge of the Police Station should ensure that the seized articles and the samples drawn there from by the seizing authority are not tempered in any manner. In the instant case it is an admitted fact by the PW3 that after drawing the samples on the seized contraband the sample packets were not delivered to the godown in-charge for proper custody with seal and signature of the in-charge of the godown in addition to the signature of the

seizing officer. From the evidence of PW2 it reveals that the samples were kept under the personal custody of PW5 and not in godown/malkhana. As such there is every possibility of tempering of the samples during their personal custody. In addition to the above, the prosecution did not examine the godown-in-charge in the present case nor had issued summons to godown in-charge for appearing before the court along with necessary documents/godown register to prove the fact that the seized goods were kept in the godown affixing the seal and the signature of the godown in-charge of any authority in addition to the seizing officer and thereby he did not comply with the provision of section 55 of NDPS Act. To strengthen this submission the learned defense counsel had relied upon the following decisions:

State of Gujrat V/S Ismile You Hazi Patel and another ;

29. I have gone through the same ; in that case there was delay in sending the samples to the chemical analyst, the safe custody of seized article has required U/S 55 was not established in that case. However, in the instant case from the evidence of PW5 it is stands abundantly established that he forwarded seizure report in the form of form F to Director General NCB, DRI, New Delhi Commissioner and Customs, Shillong, Deputy Director NCB, Guwahati for information on 20.06.2014. He has further stated that the sample packets of seized ganja were kept in his custody since the time of its recovery and till the time of its production before the learned Chief Judicial Magistrate on 20.06.2014, and on the very day samples were forwarded to FSL for chemical examination vide exhibit 12 ; so there was no delay in sending the samples to FSL, Assam for chemical examination. Furthermore, the prosecution by examining witness as brought on record, exhibit 7 the godown receipt and upon perusal of the same it is found that the godown in-charge has received 36 packets of cannabis (ganja) sealed with the seal No. A.S. Unit, Custom Division, Guwahati with description of the seal from Inspector, Anti-Smuggling Unit and facsimile of the seal was also given on the said report, till that time trial was taken in this case. The said seized impression got broken. However, the date is noted as 19.06.2014. Thus, from the above it is apparent on the date of search and seizure the seized packets were deposited at the godown and acknowledgment exhibit 7 was issued. Though, the godown in-charge was not examined in this case ; but it has no any ill effect in the prosecution case as this court finds no material to doubt the veracity of the evidence of PW5 ; the seized sample packets were kept in the

custody of PW5 and on the following day he has produced them before the learned Chief Judicial Magistrate, and on that very day he sent the sample packets to FSL, Kahilipara, Assam for chemical examination and there is no scope for tempering of the sample packets.

30. It is further hammered by the learned defense counsel that PW 5 in his evidence-in-chief has stated that there were total 36 nos of packets recovered and on examination it was found that all packets contain dark green leaves said to be suspected ganja. All the packets were then seized thereafter 24 grms sample was taken from each 36 packets in presence of the independent witness and the accused persons. After drawing of the samples in duplicate from each packet by the seizing officer, the sample packets were kept in the personal custody of PW5 till dispatch to the FSL. It is contended that the remnant of the original sample did not contain the signature of PW5. In addition to the aforesaid PW5 deposed that while forwarding the sample containing the dark green leaves to the FSL, Kahilipara, the facsimile of the seal put on the sample was given as "NCB-1" for identification. But his evidence is contradicted by FSL experts PW2, who has stated that on 20.06.2014 he had received a sealed parcel in connection with case No. 3/CL/NRC/AS/GAU/2014-15, which had consisted 36 exhibits where the facsimile of seal was found to be "AS UNIT CUTSTOM DIV GAU" and said 36 envelope closed polythene packets containing 24grm dry plant material each. From the evidence of PW2 it is crystal clear that the sample packets which were sent to the FSL containing the dry plant material under facsimile seal of "AS UNIT CUSTOM DIV GAU" are not the samples which were drawn from alleged contraband.

31. To meet the submissions of the learned defense counsel, I have gone through the evidence of PW5 and had seen that he in his evidence has stated that there were total 36 nos of packets ; on examination it is found that all packets contains dark green leaves said to be suspected ganja. This part of the submission of this witness is taken as a subterfuge by the defense to negative the evidence of the rest of the PWs as all the PWs in one voice have stated that the suspected Ganja in compressed form. This witness might have mentioned the color of the suspected Ganja as dark green leaves ; but the facts remain that the evidence of the all PWs goes on the same line and because of this, their evidence could not be disbelieved on that point and it may be treated as trifle mistake and can be overlooked.

32. As regards the limb of other attack made by the learned counsel for the accused that samples sent to the FSL were not those samples which were recovered in this case we can get clear answer on this score from the evidence of the PW2. Before coming to the evidence of PW2, we may have a look at the evidence of PW5. He in his evidence has stated that he put samples in one packet under seal condition and sent it to the Deputy Director, FSL, Kahilipara, Assam on 20.06.2014 along with the test memo. He further proves exhibit 12, is the sample forwarding letter accompanied by a test memo in connection with 3/CL/NRC/AS/GAU/2014-15 dated 19.06.2014. He has further stated that the facsimile of the seal put on the samples packets for identification was mentioned in "NCB-1". Now let us come to the evidence of PW2, to see if there was any inconsistency in the evidence of PW5 side by side the evidence of PW2. PW2 in his evidence has stated that on 20.06.2014, he received a sealed parcel in connection with Case No. 03/CL/NARC/AS/GAU/2014-15 dated 19.06.2014 from his Director for necessary examination. The parcel consists of 36 exhibits enclosed in a sealed carton box. The facsimile of the seal was found to be "AS UNIT CUSTOMS DIV GHY". Thus from his evidence it is apparent that the sealed carton box bore a facsimile of the sealed "AS UNIT CUSTOMS DIV GHY". He has not contradicted the evidence of PW5 that the facsimile of the seal put in the sample packets was mentioned in "NCB-1" for identification. Thus, whatever controversy that might have arisen, it stands settled from the evidence of PW2 which can be synchronized with the evidence of PW5. So it cannot be said there was any tempering in the sealed packets. Even, otherwise, exhibit 2 and 3 has clearly shown that the PW2 through exhibit 3, submitted his report in exhibit 2, wherein all the particulars as related to the case in hand have been given; so the genuineness and veracity of this document could not be doubted, as it tallies that the forwarding letter by exhibit 12 which was sent to FSL, Assam along with the exhibit for chemical examination.

33. The defense counsel has further challenged the statement exhibited in this case vide exhibit 19 and 20 as recorded U/S 67 of NDPS Act. As according to the learned defense counsel this provision has been violated by the customs officials. In this regard the learned defense counsel has submitted that before recording the statement of PW6 has not explained the provision of section 67, informing the accused that the said statement may be used against him as evidence. Furthermore, statement of Pintoo Kumar vide exhibit 20 was not

recorded in the presence of any independent witness ; neither PW5 nor PW6 has given any certificate to the effect that exhibit 19 and 20 were read over and explained to the accused persons and whatever was written was true and voluntary statement of the accused persons.

34. I have considered the submissions in the light of the evidence on record and I have found that both P.W 5 and P.W 6 has stated that the statement of the accused persons were recorded. It is seen in exhibit 19, statement purportedly given by Ashik Yadav, was recorded in English under his own handwriting of P.W. 7 and the said accused put his signature on this statement paper in Hindi. Prosecution failed to satisfy this Court that the said accused was well conversant with English language. There is no certificate on this statement that the accused was apprised that this statement may be used against him as evidence; similar in the position of the exhibit 20. So, upon going through the statement and the evidence of the witnesses, this Court is of the opinion that it will not be safe to rely upon this statement so it is kept out of the purview while analyzing the evidence of the rest of the P.Ws to test their veracity and trustworthiness as both the statements of the accused persons were found not made voluntarily and the accused persons were not cautioned that those statement may be used against them in the evidence at trial.

35. Furthermore, defense counsel has stated that there was no corroboration in the evidence of official witnesses and independent witnesses. Those independent witnesses may be treated as stock witnesses. Furthermore, the seized truck was not produced before this Court. Apart from all those, this Court would not have any territorial jurisdiction as the crime was detected at Baihata Chariali; it would have been the place of occurrence the search and seizure of the suspected drugs could have been done there. But it was not done so and to confer jurisdiction upon this Court, the said vehicle was brought to custom office and search and seizure was made, subsequent thereto.

36. I have considered all such submissions of the learned Defense counsel side by side, the evidence of independent witnesses and evidence of the rest of the P.Ws am I am not inclined to concur with the submission made by the learned Defense counsel as both the independent witnesses are respectable persons connected with media house and they have no grudge against the accused persons and there is no evidence on record to hold that both the

witnesses were won over by the customs. From their evidence it is apparent that both of them received information that one truck was apprehended by custom officials and as because it was their professional duty to highlight detection of narcotics, transported in this region along with other items, they voluntarily went to the Circle office and remained witness to the whole search and seizure process.

37. From the evidence it further surfaced that video recording was done but cassette was not placed before this Court. It may be noted that the prosecution has not relied upon this video recording and no official evidence has stated this fact. Whatever, video recording was done there, the independent P.W's being media persons might have recorded it as part of their profession.

38. Finally, it is submitted by the learned Defense counsel that the possession is the core ingredient to be established to hold a person guilty in NDPS case. In the present case none of the official witnesses in their evidence can establish that at the time of loading Ganja accused persons were present and the accused persons were traveling in the said truck with the knowledge of presence of Ganja in a secret cavity. Further, none of the official witnesses investigated to ascertain role of the accused and the nexus between the accused and the offending goods. It is further contented that mere presence of accused in the truck in absence of anything more cannot be presumed to be in possession of seized contraband. The investigating officer, P.W. 7, during investigation and follow up action, has failed to establish the fact that the accused persons were have the knowledge of presence of Ganja in the said vehicle. I have considered the submissions in the light of the evidence on record. From the evidence of the P.W's it stands abundantly established that on 18.06.2014 P.W. 4 Ridip Hazarika received a specific information to the effect that a huge quantity of ganja will be loaded in a secret chamber, specifically built in the front portion of the container truck bearing registration No. UP-70-DT-3635, near Udalguri area around midnight; that information was reduced into writing and forwarded to P.W. 8, D.C Bania. Thereafter, a team of custom officers was formed. They immediately proceeded to Baihata Chariali. On reaching there they kept surveillance on all closed body container truck coming from Tezpur side. They also requested some passerby to remain witness but all of them left the place without disclosing their name and address. They then continued surveillance and in the wee hours of the following day, the custom officials noticed one closed body container truck coming from

Tezpur side which matched with the information. It is alleged that search of recovery could have been made at place of occurrence ; but the fact remains the custom officials failed to find out that there was secret cavity and in that cavity that suspected narcotics were kept. The custom officials has rightly decided to bring the said vehicle to the Office without creating any ruckus and/ or attracting the attention of the persons of that area to avoid disturbance ; so it can be safely held that for not making any search and seizure of the suspected Ganja on the spot,the custom officials could not be faulted with ; they have rightly brought the vehicle to Custom Office and started search and seizure of the contraband in presence of independent witnesses.

39. Furthermore, the evidence of independent witnesses stands corroborated from the testimony of the other custom officials as regards to the detection of the secret cavity, opening of the same and recovery of the Ganja packets from the holes; now the question is whether the accused person is of culpable mental state. It is submitted by the learned defense counsel that the accused persons did not know that Ganja packets were stored in the secret cavity ; by submitting like that the defense in a way has admitted the fact that the accused persons were occupants of the said vehicle ; even otherwise, from the evidence on record, it stands abundantly established the customs officials when intercepted the vehicle in the early hours on 19.06.2014 they found that accused Ashik Yadav was driving the said vehicle and the other accused was working as assistant in that vehicle. It is further surfaced from the evidence on record that it was accused Ashik Yadav, who pointed to the exact location behind the driver seat where the secret cavity existed; it clearly showed his guilty mind; if it was not in his knowledge then how he came to learn that such secret cavity existed in that vehicle. Now the question is, if the said accused Pintoo Kumar could be visited with the same mental state ; it is a presumption which can be drawn by the court when one is found possessed with the narcotics drugs; however, it is a rebuttable presumption and can be rebutted through evidence that may be led by accused or from the evidence available in records. In this case there is ample evidence on record to hold that the accused Ashik Yadav was the driver of the said vehicle. He tried to dupe the custom officials by initially taking a false plea that the truck was empty and when the truck was brought to customs office it was he, who had pointed to the exact location of the secret chamber in which the narcotics were kept. Thus, the prosecution has succeeded to prove the guilt of

the accused for alleging commission of offence punishable U/S 20(b) (ii) (C) of NDPS Act. Beyond all reasonable doubt, In the result, accused Ashik Yadav is found guilty and is accordingly convicted thereunder. As regards the involvement of the other accused, from the evidence of PW6, it is found that in his evidence he has stated that as per statement of accused Pintoo Kumar, he was consciously involved in the illicit trafficking of Ganja. However, the fact remains that this witness in his evidence has very categorically stated that accused Pintoo Kumar came to Guwahati on request of Ashik Yadav along with him and accused Pintoo Kumar was kept in a Dhaba situated at Kharupetia by accused Ashik Yadav. This witness has further admitted that accused Pintoo Kumar had no personal knowledge about the place where the ganja was loaded in the truck and at that time he was not present at the time of loading the same in the seized truck. Thus, from the same, it is apparent that the accused Pintoo Kumar was not taken to the place where Ganja was loaded in the truck; it would only happen when the said person was not in the know of the matter of transporting of drugs.

40. Thus, involvement of this accused is found couched with clouds of doubt. Benefit for the same must go in favour of this accused. Thus extending the benefit of doubt, accused Pintoo Kumar is hereby acquitted.

41. As regards imposition of sentence this court in compliance of sub section 2 of Section 235 of Cr.PC shall proceed to hear the accused on the question of sentence on the next fixed date as per order that follows in the order sheet and thereafter the rest part of trial shall be concluded.

42. The bail bond of accused Pintoo Kumar stands discharged.

43. Signed, sealed and delivered in the open court on this 10th day of March, 201at Guwahati.

(M. Ahmed)

Sessions Judge,
Kamrup (M), Guwahati

Dictated & corrected by me.

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

ORDER

1. Heard the convict accused on the point of sentence on 18.03.2017. From the same, it appears that the accused Ashiq Yadav comes from a poor family having his wife, one daughter and one son. His daughter is now aged about 7 years and the son was given birth to just prior to his being detained in connection with this case; his elder brother Rajesh Yadav died in an accident when he set out from his house to visit him at Central Jail, Guwahati. His deceased brother left behind his family and children as survivors and there is no male member back home to take care of the day to day basic needs in both the families.

2. The accused has been convicted for committing offence under Section 20(b)(ii)(C) of NDPS Act and this provision has provided that "whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder- produces, manufactures, possesses etc. shall be punishable, where such contravention relates to sub-clause (b) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees. In this case the prosecution has succeeded to prove the fact that the afore-named accused was carrying about 1056.500 Kg of ganja concealing in a secret chamber in the vehicle when the officials intercepted the said truck and succeeded recovering large quantity of narcotics.

3. Having taken into account the nature and gravity of the offence and the pleas taken by the accused on the point of hearing, this court is of the opinion that sentence of R.I. of 10 (Ten) years and a fine of Rs. 1,00,000/- i.d. to suffer R.I. another period of 3 (three) years will meet the ends of justice.

4. It is accordingly ordered; the accused on being convicted under Section 20(b)(ii)(C) of NDPS Act is hereby sentenced to R.I. for 10 years and to pay a fine of Rs. 1 lakhs in default to suffer R.I. for another three (3)

years. The accused in his jail ; the substantive jail sentence will stand set off with the period he had undergone in jail. His bail bonds stand discharged.

5. Bail bonds of the accused stands discharged.

6. Signed, sealed and delivered in the open court on this 24th 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 : Panchanama.
 - Ext-2 : FSL Report.
 - Ext-3 : FSL forwarding report.
 - Ext-4 : Office order dated 19.06.2014.
 - Ext-5 : Weighment sheet.
 - Ext-6 : Inventory of seized goods.
 - Ext-7 : Go-down receipt.
 - Ext-8 : Option letter.
 - Ext-9 : Option letter.
 - Ext-10 : Document relating to seize amount.
 - Ext-11 : Document relating to seize amount
 - Ext-12 : Office forwarding letter.
 - Ext-13 : Test Memo.
 - Ext-14 : FSL receipt.
 - Ext-15 : Seizure report.
 - Ext-16 : Seizure List.
 - Ext-17 : Forwarding letter.
 - Ext-18 : Information forwarding letter.
 - Ext-19 : Statement of accused Ashik Yadav.
 - Ext-20 : Statement of accused Pintoo Kumar.
 - Ext-21 : Final Complaint.
- (B) Material Exhibits:
- Mat. Ext-1 : Envelop contains the 36 exhibits.
 - Mat. Ext-2 : Yellow tag.
- (C) Defense Exhibit : NIL
- (D) Court Exhibit : NIL
- (E) Prosecution Witnesses:
- PW-1 : Sri Purnya Kumar Deka.
 - PW-2 : Dr. Dhruvajyoti Hazarika.
 - PW-3 : Sri Khetrinayn Ramesh Singh.
 - PW-4 : Sri Ridip Hazarika.
 - PW-5 : Dr. Satyen Roy.
 - PW-6 : Sri Shiv Sankar Basumatary.
 - PW-7 : Sri Sanjib Kr. Das.
 - PW-8 : Sri Dwipen Bania.
 - PW-9 : Sri Dibyojyoti Rabha.
 - PW-10 : Sri Pallav Kr. Bora.

(F) Defense Witnesses : NIL

(G) Court Witnesses : NIL

(M. Ahmed)

Sessions Judge,

Kamrup(M), Guwahati