

Peter @ Peter Prakasam and R. Francis Vs State by Intelligence Officer, Narcotics Control Bureau, South Zonal Unit

Court: Madras High Court

Date of Decision: Aug. 12, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 100, 313

Evidence Act, 1872 â€” Section 24, 25, 26, 27, 30

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 21, 25, 28, 29, 53

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: T.K. Sampath, for the Appellant; N.P. Kumar, Special Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

S. Nagamuthu, J.

The Appellants are the accused in C.C. No. 126 of 2004, on the file of the learned Special Judge, Additional Special

Court under the Narcotic Drugs and Psychotropic Substances Act, 1985 cases at Chennai. The first Appellant/A1 stood charged for the offenses

under Sections 8(c) r/w 21(c), 25, 28, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, 1985 as amended by Act 9/2001.

The second Appellant/A2 stood charged for the offenses under Sections 8(c) r/w 28 and 29 of the Narcotic Drugs and Psychotropic Substances

Act, 1985, 1985 as amended by Act 9/2001. The Trial Court convicted the first Appellant under Sections 8(c) r/w 21(c) and 29 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 however acquitted the first Appellant from the charges under Sections 8(c) r/w 25 and 28 of the

Narcotic Drugs and Psychotropic Substances Act, 1985. The Trial Court convicted the second Appellant u/s 8(c) r/w 29 of Narcotic Drugs and

Psychotropic Substances Act, 1985 however acquitted the second Appellant from the charges u/s 8(c) r/w 28 of the Narcotic Drugs and

Psychotropic Substances Act, 1985. The first Appellant has been sentenced to undergo R.I for 10 years and pay a fine of Rs. one lakh in default

to undergo R.I. for one year for the offenses u/s 8(c) r/w 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and to undergo R.I.

for 10 years and pay a fine of Rs. one lakh in default to undergo R.I. for one year for the offenses u/s 8(c) r/w 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985. The second Appellant has been sentenced to undergo R.I. for 10 years and pay a fine of Rs. one lakh in

default to undergo R.I. for one year for the offenses u/s 8(c) r/w 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. As against the

said conviction and sentence, the Appellants are before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

(i) In this case there are totally four accused involved. Two accused by name Mujahid and Mohammed Bhai are absconding. The case against

these Appellants alone was tried in C.C. No. 126 of 2004. According to the case of the prosecution, these two Appellants along with the

absconding accused hatched a criminal conspiracy at Thoothukudi, Salem, Chennai and Colombo during the year 2003 to procure, possess and

transport heroin.

(ii) Out the said conspiracy, heroin weighing 10.420 kgs was carried in a lorry bearing Registration No. TN-25-A-9207 on 02.12.2003. The said

lorry was intercepted at a place opposite to the Block Development Office on the G.S.T. Road, Katangolathur, Chengalpet Taluk, Kanchipuram

District on 02.12.2003 at 11.00 a.m. The first accused besides the driver and the cleaner of the lorry was found in the lorry.

(iii) According to the case of the prosecution, the first accused was found in constructive possession of the said heroin. After following the

procedure contemplated under the Narcotic Drugs and Psychotropic Substances Act, 1985 and Code of Criminal Procedure, the same was

seized. On the confession of the first accused, the second accused was arrested who in turn has also given a confession admitting his guilt.

(iv) On these allegations, the Intelligence Officer, NCB (South Zonal Unit), Chennai filed a private complaint before the Special Court, upon which

cognizance was taken. Based on the same, the charges as referred to in the first paragraph of this judgment were framed. The accused denied the

charges. As many as nine witnesses were examined and 54 documents were marked as Exs.P.1 to P.54 besides 12 material objects.

3. The brief of the prosecution case as spoken to by the witnesses can be summarized as follows:

(i) P.W.3, Mr. A. Sendhil Murugan, during the relevant time, was working as Intelligence Officer attached to Narcotics Control Bureau, South

Zonal Unit, Chennai. On 01.12.2003, at 6.00 p.m. when he was in his office, he received a telephonic call over which the caller told him that one

Mujahid a native of Srilanka was involved in smuggling Narcotic Drugs from India to Srilanka. He further told that 10 kgs of heroin was to be

smuggled from North India through a person by name Francis of Thoothukudi. He further informed that Mr. Francis had made arrangements along

with his co-brother's son by name Peter for the said purpose. As per the programme, Mr. Peter was to carry 10 kgs of heroin in a lorry bearing

Registration No. TN-25-A-9207 from Chennai to Thoothukudi. Mr. Peter would smuggle the same to Srilanka via sea. The informant further

stated that on 02.12.2003, the said lorry would be proceeding towards Thoothukudi via Perugalathur via Maduranthagam on the G.S.T. Road

around 10.00 am to 12.00 noon.

(ii) P.W.3 reduced the said information in writing under Ex.P.9 and forwarded the same to his immediate superior Officer Mr. S. Gunabalan

(P.W.8), who was then working as the Superintendent attached to the Respondent office. On going through the said information, P.W.8 held

discussion with his fellow officers viz., P.W.1, P.W.3 and one Mukundan who are all Intelligence Officers attached to the Respondent. P.W.8,

instructed P.Ws.1, 3 and Mr. Mukundan to take immediate action.

(iii) On 02.12.2003, at 7.00 a.m. P.Ws.8, 1, 2, 3 and one Mukundan proceeded to the place of occurrence in a Maruthi Omni Van. At 9.00 a.m.

they reached Katankulathur at the G.S.T. Road. On the instructions of P.W.8, P.W.3 requested P.W.5 and one Perumal who were the Sub

Inspector of Police and Head Constable respectively on patrol duty, to be witnesses. Accordingly, they also joined P.W.8 and others.

(iv) At 10.00 a.m. they all assembled in front of the Block Development Office at Katankulathur at G.S.T. Road. When they were closely

watching the traffic, at 11.00 a.m. a lorry bearing Registration No. TN-25-A-9207 was proceeding towards Maduranthagam. To check the said

lorry near the place where they were standing, they intercepted the same. The lorry came to a halt. In the lorry there were three persons. P.W.3

went near the lorry and introduced himself to the inmates of the lorry. of the three persons in the lorry, the driver was one Kesavakumar of

Thoothukudi, the other person sitting near the cabin of the lorry was one Peter @ Peter Prakasam (first accused). On the left side of the cabin of

the lorry, the cleaner by name Balu @ Balakrishnan was sitting.

(v) Then in the presence of the witnesses, P.W.3 -Mr.Sendhil Murugan- informed the inmates of the lorry about the information they had u/s 42 of

the Act and also informed that they had decided to search the lorry. P.W.3 explained to all the inmates that they had right to demand for search

being made in the presence of a Gazetted Officer or a learned Judicial Magistrate. He further told them that he was ready to take them either to a

Gazetted Officer or a learned Judicial Magistrate for the purpose of conducting a personal search in his presence. But all the three persons

including the first accused told that P.W.3 could himself conduct the search and they were not willing to be searched in the presence of a Gazetted

Officer or a learned Judicial magistrate.

(vi) Thereafter, P.W.3 enquired A1 as to whether he had any Narcotic drug in his possession. Immediately, A1 answered in the affirmative and

opened a small safe in the lorry situated inside the cabin on the left side. On such opening of the safe, he took out two rexine bags containing some

substance. He told P.W.3 and other officers they there was 10 kgs of heroin in the packets. He handed over the said two bags to P.W.3. P.W.3,

in the presence of witnesses and Ors. opened both the bags and found a packet in each bag covered by cloth. Then he took out the packets

covered with cloth and further opened it. On such opening, it was found out that they contain two polythene covers containing some substance. On

opening the polythene covers, it was found that there was a brown colour powder in each packet. P.W.3 took out a pinch of the powder from each

packet and put it in the kit he had brought for test. The kit indicated that the powder was heroin.

(vii) Therefore, P.W.3 decided to seize the said packets containing the substance viz., heroin. P.W.3, weighted both the packets with the use of a

scale which he had readily in his hand. One packet was found weighing 5.300 kgs and other weighing 5.120 kgs. Thus the total weight was 10.420

kgs of heroin. Then P.W.3 took two packets of sample each containing 5 gms from each packet. The samples were put in packets and sealed

properly by affixing a slip on each packet. They were assigned numbers as Section 1 to Section 4. The slips were numbered as P1 and P2. Then

he recovered a rexine bag and tied the same as one material and numbered as Ex.P3.

(viii) Then P.W.3 seized the lorry along with the other materials found in the lorry. He seized Rs. 1010/- and a mobile phone from the first accused.

The driver was found to possess a driving licence and the cleaner some Indian currency notes. On further searching the lorry, 14 documents such

as permit, agreement for the purchase of the lorry, insurance etc., were seized. Then he seized the packets containing heroin and affixed the NCB

seal. P.W.3, prepared the Mahazar for the recovery of the above articles to which P.W.8, P.W.1, lorry driver and the cleaner were all witnesses.

Ex.P.10 is the said Mahazar. A copy of the Mahazar was furnished to all the three inmates of the lorry including the first accused.

(ix) Then summons u/s 67 of the Act were served on all the three inmates of the lorry including the first accused. Then P.W.8, P.Ws.1 to 3 and the

other witnesses proceed to the Maraimalai Nagar Police Station along with the inmates of the lorry including the first accused and the contraband

seized from the place of occurrence. They reached the said police station at 4.30 p.m.

(x) At the police station, the first accused appeared before P.W.1. On such appearance, the first accused at 4.30 p.m. gave a voluntary statement

in his own handwriting and handed over the same to P.W.1. Ex.P.4 is the said confession statement of the first accused. Thereafter, P.W.1

arrested the first accused at 11.30 p.m. The arrest memo in Ex.P.5 was prepared and a copy of the same was served on the accused. Then P.W.1

produced the first accused along with his statement (Ex.P.4) to P.W.3 Mr. Senthil Murugan.

(xi) On the same day at 4.30 p.m. Mr. Balakrishnan the cleaner of the lorry appeared before P.W.2 and he gave a statement in his own

handwriting and handed over the same to P.W.2. In the statement he had stated that he had nothing to do with the contraband. Since P.W.2

believed the said version, he let him off. Then he handed over the statement of Mr. Balakrishnan (Ex.P.8) to P.W.3.

(xii) On the same day at 4.30 p.m. Mr. Mukundan examined the driver and recorded his statement. Since he was also found to have No.

connection with the contraband, he was also let off.

(xiii) On 03.12.2003, the first accused was produced before the learned Judicial Magistrate II at Chengalput for judicial remand. On the same

date, P.W.3 produced the seized articles including the heroin packets and sample packets to P.W.8. In acknowledgment of the same P.W.8

issued Ex.P.21 receipt. P.W.8 kept the said contraband in the godown under safe custody. On 04.12.2003, P.W.1 and P.W.3 submitted reports

u/s 57 of the Act to him under Exs.P.6 and P.12.

(xiv) Thereafter, on 19.12.2003, P.W.8 gave a requisition to Assistant Commissioner (Central Excise) at Thoothukudi to conduct house search on

the house of the second accused. Ex.P.22 is the said requisition. On 24.12.2003, P.W.6-Mr. E. Ramachandran- at 12.30 a.m. conducted house

search at the house of A2 in the presence of P.W.1 and two witness by name Suresh Antony and Rafeesh. The wife of the second accused was

also present but No. incriminating material was seized from the house. In this regard a Mahazar was prepared.

(xv) Thereafter P.W.6 issued summons to the second accused calling upon him to appear before the NCB officials for interrogation. The said

summons was issued on 24.12.2003. Again on 25.12.2003, P.W.9 issued summons to the second accused to appear before him at the Customs

Division Office, Thoothukudi at 8.00 a.m. on the same day. Ex.P.44 is the said summons. Accordingly A2 appeared before him and gave a six

page statement written in his own handwriting. The said statement given u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is

marked as Ex.P.45.

(xvi) The photograph of the first accused was shown to A2 and A2 in turn identified A1 in the photograph. The photograph with endorsement of

A2 is marked as Ex.P.47. The passport issued in the name of second accused is Ex.P.46 and the same was also seized from him. Thereafter,

P.W.9 arrested A2 at 3.00 p.m. on 25.12.2003 and arrest memo was served on him. Thereafter, he was produced before the learned Judicial

Magistrate, Thoothukudi for remand. Accordingly, he was remanded. On 26.12.2003, he submitted a report u/s 57 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 to P.W.8 in respect of the arrest of A2, seizure of material objects and the confession of the A2.

(xvii) Continuing the investigation, P.W.8 made a request to the Court for forwarding the sample packets for chemical examination. On

10.02.2004, P.W.8 received the chemical analytical report under Ex.P.16. According to Ex.P.16, the substance contained in the sample packet

was heroin. He handed over Ex.P.16 to the investigating officer.

(xviii) On 16.04.2004, he made a request to BSNL, Tamil Nadu Circle to furnish the details of the incoming and outgoing calls from the mobile

No. 94432 88546. Similarly, he gave a request to the Regional Transport Officer, Tirunelveli District to give a certificate in respect of the

ownership of the lorry seized. On the same day, he made a request to the Airtel, Tamil Nadu Circle, for furnishing the details about the incoming

and outgoing calls from two mobile Nos. 98421 59138 and 98422 54962. Similarly he gave yet another request to BPL, Tamil Nadu Circle

calling for details of the mobile No. 98432 40926. Then he issued summons to P.W.5 Mr. M. Elumalai the Sub Inspector of Police and Mr.

Perumal the Head Constable to appear before him for interrogation.

(xix) Thereafter, the statement of witnesses were recorded, records were collected and finally a complaint was laid before the Special Court, on

which basis, the learned Special Judge took cognizance and tried the accused since they denied the charges.

4. As I have already narrated P.W.1 Mr. R. Murugan, P.W.2 Mr. S. Karthikeyan, P.W.3 Mr. A. Sendhil Murugan and P.W.8 Mr. S. Gunabalan

have spoken to about the proceedings starting from the receipt of the secret information till the laying of the complaint. P.W.5 has spoken to about

the interception of the lorry and the possession of heroin in the lorry at the hands of the first accused. P.W.6 has spoken to about the house search

conducted at the house of A2. P.W.4 who is a Chemical Analyst has spoken to about the analysis conducted by her on the samples and the report

submitted by her. P.W.7 has spoken to about the house search conducted at the house of A2. P.W.9 has spoken to about the arrest of the second

accused, confession given by him and the recovery of certain material objects.

5. When the above incriminating evidence were put to the accused u/s 313 Code of Criminal Procedure, they denied the same as false. The first

accused in his statement u/s 313 Code of Criminal Procedure has stated that the driver of the lorry, on the crucial date called him over the phone

while he was in Thoothukudi and wanted him to rush to Katangalathur. Accordingly he went there. At Katangalathur he was immediately arrested

by the Central Excise officials. He has further stated that he has got nothing to do with the substance involved in this case. The second accused in

his statement has stated that he has got nothing to do with the heroin in this case. But, because of some previous enmity the Central Excise Officials

have foisted this false case. But they do not choose to examine any witness on their side. One document was exhibited in defence as Ex.D1.

6. Having considered the above materials, the Trial Court found the accused guilty as detailed in the first paragraph of this judgment and

accordingly punished them. That is how the Appellants are before this Court with this appeal.

7. I have heard the learned Counsel Mr. T.K. Sampath for the Appellants and Mr. N.P. Kumar learned Special Public Prosecutor for the

complainant NCB, Chennai and also perused the records carefully.

8. The learned Counsel appearing for the Appellants among other grounds would focus his arguments on the following grounds viz.,

(i) The so called confession of the first accused under Ex.P.4 is not admissible in evidence in terms of Section 26 of the Evidence Act since the

same was recorded in the police station in the presence of police personnel. Further the said statement cannot be taken as a voluntary confession

of the first accused. The retraction of the said confession on 16.12.2003 needs to be weighed.

(ii) Assuming that Ex.P.4 is admissible in evidence and the same can be acted upon, in the absence of corroboration from any independent source,

conviction solely based on the same cannot be sustained.

(iii) There are lot of discrepancies between the evidence spoken to by various witnesses and the documents pressed into service by the

prosecution on material particulars and such discrepancies will make the case of the prosecution incredible.

(iv) The foremost discrepancy is that the time of seizure of the lorry. According to the case projected by the prosecution, the lorry was seized at

11.00 a.m. on 02.12.2003, whereas, according to P.W.1, it was seized only at 11.30 p.m. at night.

(v) Similarly in respect of the place where the seizure of contraband was effected, there is discrepancy in as much as according to Exs.P.5, P.6,

P.15 and P.22, seizure was effected from a place opposite to Block Development Office, whereas according to Ex.P.19 -Summons issued to A2-

seizure was effected from a premises opposite to Block Development Office.

(vi) Though it is alleged that the lorry was intercepted at the place of occurrence at 11.00 a.m. Ex.D1, police notice issued by Inspector of Police

(Traffic) Villivakkam, Chennai which was seized from the lorry would show that the lorry was charged by the Inspector of Police for Traffic

violation on 02.12.2003 at 17.15 hours i.e., 5.15 p.m. Therefore, interception of the lorry and seizure of contraband at 11.00 a.m. on 02.12.2003,

cannot be true.

(vii) Though P.W.8 and his party proceeded to the place of occurrence on specific information, there is No. explanation as to why they did not

choose to take independent witnesses as required u/s 100 of Code of Criminal Procedure

(viii) P.W.5, the Sub-Inspector of Police on patrol service was procured by the Respondent to be a witness for their alleged search and recovery

hence the evidence of P.W.5 is tainted and the same cannot be believed.

(ix) The second accused was served with summons on 24.12.2003, and accordingly he was present at the office of P.W.6. The same is spoken to

by P.W.6. But then again summons was issued by P.W.9 to A2 to appear on 25.12.2003. The confession under Ex.P.45 was thereafter allegedly

recorded on 25.12.2003 at 8.00 a.m. The said statement cannot be considered to be voluntary.

(x) The so called confession recorded under Ex.P.45 was duly retracted by A2 without any delay. Thus it becomes tainted.

(xi) The conviction of the second accused based on Exs.P.45 and P.4 cannot be sustained since both are tainted statements.

9. The learned Counsel submitted extensive arguments elaborating the above grounds and in conclusion, he pleaded for acquittal of both the

accused.

10. The learned Special Public Prosecutor would stoutly oppose the appeal. According to him, the confession of A1 under Ex.P.4 and the

confession of A2 under Ex.P.45 are all voluntary confessions and there are No. materials to hold that they are not voluntary. According to the

learned Special Public Prosecutor, it is settled law that these confessions can be the foundation for conviction of the accused.

11. He would further submit that apart from Ex.P.4 confession, as per the evidences of P.Ws.1 to 3, 5 and 8 it has been clearly established that

the first accused was found in possession of heroin seized from the lorry. There are reasons to disbelieve their evidences. Thus, the possession of

heroin at the hands of the first accused has been clearly established by the prosecution. Thereafter, it is the burden of the accused to disprove the

same which he had not done. The evidences of P.Ws.1 to 3, 5 and 8 are duly corroborated by the confession of the first accused.

12. Regarding the second accused, the learned Special Public Prosecutor would submit that his voluntary confession under Ex.P.45 itself can be

the sole basis for conviction and there are No. materials to doubt the voluntariness of the same. Apart from that, the said confession is duly

corroborated by the confession of the first accused under Ex.P.4. Therefore, conviction of the second accused also needs to be sustained, he

contended.

13. In respect of Ex.D1, the learned Special Public Prosecutor would submit that Ex.D1 is not legible and does not show that the said police

notice was issued at 17.15 hours as it is projected by the learned Counsel for the Appellants. In the absence of the examination of the Inspector of

Police (Traffic), Villivakkam, Chennai, according to him, No. weightage should be given to Ex.D1. He would further submit that the receipt for

payment of fees issued by the National Highways Authority of India marked as exhibit would go to show that the lorry crossed the Vannagaram

between Tambaram and Maduravoyal on 02.12.2003 at 10.03 a.m. this will clearly go to substantiate the case of the prosecution that at 11.00

a.m. it was intercepted at Katankulathur near Tambaram. Thus according to him, there is No. discrepancy.

14. The learned Special Public Prosecutor would further contend that the so called discrepancies pointed out by the learned Counsel for the

Appellants are highly immaterial and they will not create any doubt in the case of the prosecution. In conclusion, he prayed for the dismissal of the

appeal.

15. The learned Counsel on either side have placed reliance on a number of decisions of the Hon"ble Supreme Court as well as this Court about

which I will make reference at the appropriate stages of this judgment.

16. I have considered the above submissions and also perused the records carefully.

17. For the sake of convenience, let me first of all take up the case of A1. So far as the first accused is concerned, the prosecution mainly relies on

the evidences of P.Ws.1 to 3, 5 and 8 who have spoken to about the possession of the contraband viz., heroin at the hands of the first accused at

11.00 a.m. on 02.12.2003. The contention of the learned Counsel for the Appellants is that in the absence of any independent witness the

evidence of these witnesses are to be rejected. He would further submit that since P.W.8 and other officials proceeded to the place of occurrence

on a specific information, they should have taken independent witnesses to the place of occurrence instead they have taken only P.W.5 and

another Mr. Elumalai who are police officials to be witnesses. This is not in tune with Section 100 of Code of Criminal Procedure For this

proposition, the learned Counsel would rely upon the judgment of this Court reported in 2010 (2) Drugs Cases (Narcotics) 443 (M.A. Jaffar Ali

v. The Intelligence Officer) wherein the learned Judge (Hon"ble Mr. Justice T. Sudanthiram) in paragraph No. 10 of the judgment has observed as

follows:

10. The manner in which the search and seizure was conducted by P.W.3 and the evidence let in by the prosecution regarding the search and

seizure does not inspire the confidence of this Court. The audacity of the NCB Officers is only seen by this Court by procuring the police

personnel as mahazar witness, but fair compliance of Section 100 Code of Criminal Procedure is missing.

18. Making reliance on the above observations of the learned Judge, the learned Counsel for the Appellants would submit that in the case on hand

also, since No. independent witnesses were procured by P.W.8 and his team for the purpose of search and seizure, the case of the prosecution

should be disbelieved. In my considered opinion, the said argument is only liable to be rejected. A close reading of the entire judgment of this

Court in M.A. Jaffar Ali's case would go to show that the learned Judge acquitted the accused not on the only ground that independent witnesses

were not procured by the NCB officials but on various other doubts which are very material, going into the very root of the case. For example, in

that case, though it was alleged that the accused was intercepted at Madras Airport, there was No. search conducted on the spot, instead he was

taken to the NCB office where in the presence of police officials search was conducted. It was under those circumstances, the learned Judge

doubted the veracity of the case of the prosecution in respect of the very recovery of the contraband from the accused. While disbelieving the case

of the prosecution on that score, the learned Judge has pointed out the flaw in the case of the prosecution, in as much as, the NCB officers did not

procure independent witnesses and instead they had procured police persons as Mahazar witness. To put it otherwise, the learned Judge has not

laid down any law so as to hold the same as a precedent to bind this Court. It was only a passing observation made by the learned Judge having

regard to the peculiar facts and circumstances of that case. But in the case on hand, though there is No. explanation offered by the prosecution as

to why No. independent witness was procured by P.W.8, on that score the entire case of the prosecution cannot be disbelieved as false. It is only

in a case where the flaw pointed out by the accused is so material which would create a doubt in the case of the prosecution, then the Court would

disbelieve the prosecution case. But in this case, the flaw on the part of the Investigating Officer in not taking independent witnesses to the place of

occurrence is not very material and therefore on that score the case of the prosecution cannot be doubted.

19. Now turning to the evidence of P.W.5 though he happened to be a policeman, that could not be a ground to reject his evidence. It is seen that

though he has been subjected to lengthy cross examination, he has withstood the same and nothing has been brought on record to discredit his

evidence. Thus, I do not find any reason to reject the evidence of P.W.5.

20. Apart from that, the receipt issued by the National Highways Authority of India at Vannagaram for collection of toll from the driver on

02.12.2003 at 10.03 a.m. deserves due consideration. This document has been exhibited on the side of the prosecution. This document was

seized from the lorry at the time of seizure. The said fact has not been denied at all by the first accused. This document would clearly go a long way

to show that the lorry had crossed Vanagaram at 10.03 a.m. between Tambaram and Maduravoyal. By about 11.00 a.m. thereafter, the lorry was

intercepted by P.W.8 and Ors. at Katangalathur. This document would clearly go to corroborate the evidences of P.Ws.1 to 3, 5 and 8.

21. The learned Counsel for the Appellants would submit that Ex.D1 would falsify the entire interception of the lorry at 11.00 a.m. at

Katangalathur. He would submit that a police notice was served by the Inspector of Police, Villivakkam Police Station at Chennai for violation of

traffic rules on 02.12.2003 at 17.15 hours. This would go to show that till 5.15 p.m. on 02.12.2003, the lorry was not seized by the police.

Therefore, according to the learned Counsel, the lorry has not been intercepted at Katangalathur at 11.00 a.m. on 02.12.2003 as it is projected by

the prosecution. Though attractive, this argument deserves only to be rejected.

22. A look into Ex.D1 police notice would go to show that it is not legible. When P.W.1 was cross examined, with reference to the same, he has

denied that it contained the time as 17.15 hours. Had it been true that the lorry was intercepted by the Inspector of Police at 17.15 hours on

02.12.2003 elsewhere, nothing would have prevented the accused to summon the Inspector of Police, Villivakkam Police Station to prove the said

fact. For the reasons best known to the accused, they failed to do so. In such view of the matter, since Ex.D1 is not legible and since the author of

the said document has not been examined, the argument of the learned Counsel for the Appellants based on the said document is only to be

rejected. Apart from that, the receipt for payment of fees to the National Highways Authority of India would go to falsify the argument of the

learned Counsel for the Appellants that the lorry was intercepted elsewhere by the Inspector of Police.

23. Nextly, the learned Counsel would submit that though it is the case of the prosecution that the lorry was intercepted at 11.00 a.m. on

02.12.2003, P.W.1 has stated during cross examination that the lorry was seized at 11.30 p.m. only. In my considered opinion, it was never the

case of the P.W.1 even in the chief examination that the lorry was seized at 11.30 p.m. Therefore, there is every reason to infer that the time

mentioned as 11.30 p.m. during cross examination of P.W.1 is either an answer given due to slip of tongue or it may even be a typographical error.

Therefore, this argument is rejected.

24. Next, the discrepancy pointed out by the learned Counsel for the Appellants is that as per Exs.P.5, P.6, P.15 and P.22, the seizure was

effected from the place opposite to Block Development Office whereas according to Ex.P.19, the summons issued to A2, the seizure was effected

from the premises opposite the Block Development Office. The learned Counsel would try to project this discrepancy by blowing it out of

proportion. In the former documents it is mentioned as "place" whereas in Ex.P.19 it has been mentioned as "premises". It cannot be considered

to be a major discrepancy or contradiction. Further, there is No. cross examination in respect of the same also. Therefore, this discrepancy does

not in any manner affect the case of the prosecution.

25. In this regard, the learned Counsel would rely on the judgment of the Hon"ble Supreme Court in Noor Aga v. State of Punjab reported in

2008 Drugs Cases (Narcotics) 352 wherein the Hon"ble Supreme Court has held in para 152 (4) as follows:

Finding on the discrepancies although if individually examined may not be fatal to the case of the prosecution but if cumulative view of the scenario

is taken, the prosecution's case must be held to be lacking in credibility.

Relying on the above observation, the learned Counsel would submit that in the instant case also there are lot of discrepancies as pointed out

earlier and therefore on that score the accused are entitled for acquittal.

26. What was relied on by the learned Counsel as extracted above is not a law laid down by the Hon"ble Supreme Court. It is only an observation

made by the Court rather than a conclusion arrived at by the Hon"ble Supreme Court by having a cumulative view of the entire scenario of the

prosecution case. It is needless to point out that whether the discrepancies in a given case would render the prosecution case unbelievable or not

would fall within the realm of appreciation of evidence. There could be No. hard and fast rule on this subject. It all depends upon the facts and

circumstances of each case. In the given case, if the Court finds that despite the discrepancies pointed out by the defence, if an overall view of the

case shows that the prosecution has proved the guilt of the accused, there can be No. legal impediment to convict the accused. In the case on

hand, there is No. substance in the contention of the learned Counsel for the Appellants in projecting certain discrepancies. I have already given my

reasons as to why I hold that there are No. discrepancies which are material.

27. Apart from the ocular witnesses, the prosecution has relied on Ex.P.4, the confession given by the first accused implicating himself as well as

the second accused. The contention of the learned Counsel is that the said confession is not voluntary. In order to substantiate his contention, the

learned Counsel would submit that the first accused was taken to the police station where the statement was given. Therefore, the same is hit by

Section 26 of the Evidence Act. For this proposition, the learned Counsel relied on a judgment of the Hon"ble Supreme Court in Francis Stantly

@ Stalin v. Intelligence Officer, Narcotic Control Bureau, Thiruvanan Thapuram reported in 2008 Drugs Cases (Narcotics) 124, wherein the

Hon"ble Supreme Court has held in paragraphs 14 to 16 as follows:

14. It is true that in the present case the confession was made by the accused not before an ordinary police officer, but before an officer under the

Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Narcotic Drugs and Psychotropic Substances Act, 1985")

who is an officer of the Department of Revenue Intelligence, and it is held by this Court in Raj Kumar Karwal v. Union of India that such a

confession is not hit by Section 25 of the Evidence Act.

15. We are of the opinion that while it is true that a confession made before an officer of the Department of Revenue Intelligence under the

Narcotic Drugs and Psychotropic Substances Act, 1985 may not be hit by Section 25 in view of the aforesaid decisions, yet such a confession

must be subject to closer scrutiny than a confession made to private citizens or officials who do not have investigating powers under the Act.

Hence the alleged confession made by the same Appellant must be subjected to closer scrutiny than would otherwise be required.

16. We have carefully perused the facts of the present case, and we are of the opinion that on the evidence of this particular case it would not be

safe to maintain the conviction of the Appellant, and he must be given the benefit of reasonable doubt.

28. The learned Counsel would submit that in the case on hand also, since the confession had been recorded at the police station that too in the

very presence of the police, it is not admissible in terms of Section 26 of the Evidence Act.

29. A perusal of the above judgment of the Hon"ble Supreme Court would make it very clear that it is not a binding precedent for other cases. In

that case, going by the peculiar facts and circumstances, the Hon"ble Supreme Court held that the statement of the accused u/s 67 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 would not be reliable. But the Hon"ble Supreme Court has not laid down any general principle in

this regard. It is seen from the following observation of the Hon"ble Supreme Court in the very same judgment in paragraph 17:

17. We make it clear that we are not laying down any general principle in this case, and are deciding it only on the particular facts and

circumstances of this case. Hence, this case cannot be precedent for other cases which may be on their own facts.

30. In view of the above, I hold that reliance made on the said judgment by the learned Counsel for the Appellants needs only to be rejected.

31. The learned Special Public Prosecutor would, per contra, rely on the judgment of the Hon"ble Supreme Court in *Kanhaiyalal v. Union of India*

reported in 2008 (1) Crimes 154 (SC). That was a case where the accused was sought to be convicted solely on the basis of the confession

statement made by him u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The question which came up for consideration

before the Hon"ble Supreme Court was as to whether such statement made to an Officer within the meaning of Section 67 of the said Act could

be treated as confession statement and whether the accused could be convicted on the basis thereon in the absence of any other corroborative

evidence.

32. Here it should also be mentioned that in the said case before the Hon"ble Supreme Court, the confession was later on retracted by the

accused. While examining the above question, the Hon"ble Supreme Court had the occasion to look into the the eleven Judge Bench of the

Hon"ble Supreme Court in *The State of Bombay Vs. Kathi Kalu Oghad and Others*, wherein it was inter alia, held that the accused person cannot

be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more.

In other words, just being in Police custody when the statement was made would not, by itself, give rise to an inference that the accused had been

compelled to make such statement. It was also held that to bring the statement within the prescription of Article 20(3), the person accused must

have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused any time

after the statement had been made.

33. In view of the law laid down by a larger bench in *Kathi Kalu Oghad* case, there can No. more be any doubt that simply because at the time

when confession is made, the accused is in police custody without anything more, it will not give rise to any inference that the accused had been

compelled to make those statements. In the case on hand, it is the positive case of the prosecution that at the place of occurrence A1 was given the

summon to appear before P.W.1 at the police station because it was the nearest police station. It is also in evidence that police personnel were

also present at the police station when he gave the statement. Thus, it has been established by the defence that when the statement was made by

him, he was in the police station and police personnel were present at the police station. As held by the Hon"ble Supreme Court, that will not give

rise to an inference that the first accused was compelled to or coerced to give any confession statement. Therefore, the presence of the police

personnel and the fact that the statement was made at the police station will not make the statement inadmissible in evidence in terms of Section 26

of the Evidence Act.

34. Proceeding further in Kanhaiyalal"s case in paragraph 37 of the judgment, the Hon"ble Supreme Court has reiterated the law relating to

confession u/s 67 of the Act as follows:

37. The law involved in deciding this appeal has been considered by this Court from as far back as in 1963 in Pyare Lal Bhargava case. The

consistent view which has been taken with regard to confessions made under provisions of Section 67 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as

confessions for the purpose of Section 27 of the Evidence Act, but with the caution that the court should satisfy itself that such statements had been

made voluntarily and at a time when the person making such statement had not been made an accused in connection with the alleged offence. In

addition to the above, in Raj Kumar Karwal v. Union of India this Court held that officers of the Department of Revenue Intelligence who have

been vested with powers of an officer in charge of a police station u/s 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, 1985,

are not ""police officers"" within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the

course of investigation of a person accused of an offence under the Act is admissible in evidence against him. It was also held that power conferred

on officers under the Narcotic Drugs and Psychotropic Substances Act, 1985 in relation to arrest, search and seizure were similar to powers

vested on officers under the Customs Act. Nothing new has been submitted which can persuade us to take a different view.

35. In view of the law restated by the Hon"ble Supreme Court in Kanhaiyalal"s case cited supra there can be No. doubt that the confession of the

accused u/s 67 of the Act is very much admissible in evidence provided the said statement is voluntary.

36. In the given case, whether the said statement was made voluntarily or out of compulsion or coercion etc., is a pure question of fact which

needs to be appreciated depending upon the facts and circumstances of the case. There can be No. universal law on the subject.

37. In Raju Premji Vs. Customs NER Shillong Unit, similar question came up for consideration before the Hon"ble Supreme Court. In paragraph

24 of the said judgment the Hon"ble Supreme Court has stated as under:

24. Whether a confessional statement is voluntary and free from any pressure must be judged from the facts and circumstances of each case....

The Hon"ble Supreme Court in the said judgment had occasion to refer to Noor Aga case referred to above also. In Raju Premji case the Hon"ble

Supreme Court on appreciating the facts held that the confession was not voluntary. But the learned Counsel for the Appellants would rely on

paragraph 26 where the Hon"ble Supreme Court has observed as follows:

26. In any event if they were in custody of the police officers as also the Customs Officers, although they were not accused in strict sense of the

term, any confession made by them would not be admissible in terms of Section 26 of the Evidence Act, 1872.

38. Placing much reliance on the above, the learned Counsel for the Appellants submitted that in the case on hand also since at the time Ex.P.4

statement was given by A1, he was in the police station, the said statement is not admissible in 40 terms of Section 26 of the Evidence Act. This

argument does not persuade me at all.

39. A reading of the facts involved in Raju Premji case would go a long way to show that in that case, the accused was intercepted by the police

and thereafter he was taken by the police to Customs Office, where it is alleged that he made the confession to the Customs Officer. While

considering such a situation, the Hon"ble Supreme Court in paragraph 20 has made the following observation:

20. From the very beginning, concededly, the Appellants were in the police custody. They were put to interrogation by the police officers. They

were not free persons. They were under orders of restraint and thus would be in the custody of the police officers. Any statement made by them

while in custody of a police officer would be inadmissible in evidence in terms of Section 26 of the Evidence Act, 1872

In order to further understand the above case, it is worthwhile to extract the facts involved in that case as narrated in paragraphs 13 to 15 which

reads as follows

13. An information was received by the police authorities. The police officers were empowered officers within the meaning of the provisions of the

Narcotic Drugs and Psychotropic Substances Act, 1985. They were required to reduce the same into writing so as to apprise the higher officers

thereabout. No search warrant or authorisation was obtained. Some plainclothes policemen were posted. In the own words of the prosecution

witnesses and particularly those of PWs 9 and 10, M. Kharkrang, Additional Superintendent of Police, SI N. Thapa, respectively, the Appellants

were nabbed. Raid was conducted inter alia by SI N. Thapa, PW 10. They were taken in custody and brought to the office of PW 9. Even then

they were not asked to make any statement. They were not even summoned. Their persons were searched without complying with the provisions

of Section 50 of the Act. They were evidently interrogated. Only on interrogation they disclosed about the address of Accused 1.

14. In the aforementioned situation, it is difficult to comprehend as to why the Customs Officers had to be informed. The police officers could

themselves carry out the search and seizure. They being empowered therefor should have exercised their own jurisdiction. Customs Officers, we

would assume, were invested with the powers of an officer in charge of a police station in terms of a notification issued u/s 53 of the Narcotic

Drugs and Psychotropic Substances Act, 1985, but that does not mean the police officers were denuded of their jurisdiction there under. Why the

police authorities should have transferred the case to the Customs Authorities defies any logic.

15. It is admitted that the Appellants were taken to Village Nonghymmai of which Accused 1 was a resident by the police officers including PWs 9

and 10. The Customs Officers joined them much later. Search of the house of Accused 1 was not carried out by the Customs Officers exclusively.

All police officers present joined in the search. Evidently the search was made after sunset. As information was received by PW 9 at about 6.30

p.m., as is evident from the statement by him before the court he left the house of Accused 1 at about 10.00 p.m. while the Customs Officers had

still been carrying on some other formalities. All four accused were brought to the police station for further interrogation and on the next date the

Customs Officers informed the police officers that both of them were required to be arrested. It is at that time that their custody was handed over

to the Customs Officers.

40. As seen from the above, the accused were intercepted by the police, nabbed by the police, kept in police custody and lastly taken to the

Customs office where the accused gave the confession. It was in that factual situation, the Hon"ble Supreme Court has held that the accused was

very much in police custody though they had not been arrested as per the record. It was in such factual background, the Hon"ble Supreme Court

in paragraph 20 of the judgment held that any statement made by the accused while in custody of a police officer would be inadmissible in evidence

in terms of Section 26 of the Evidence Act. But in the case on hand the facts are totally distinguishable. The first accused was never arrested by

any police. Even P.W.8 and P.W.1 did not arrest him on the spot. A summons was issued only to appear before P.W.1 at the police station.

Though the fact remains that the statement was recorded at the police station, there is No. evidence at all to show that he was in the custody of the

police and he was subjected to interrogation by the police.

41. Though it is true that there would have been some police officials present at the police station such a mere presence of police officials would

not mean the accused was in the custody of the police so as to render the statement inadmissible in terms of Section 26 of the Evidence Act.

Therefore, this argument of the learned Counsel that Ex.P.4 is inadmissible is rejected.

42. The learned Counsel would further submit that since Ex.P.4 statement was retracted by A1 on 16.12.2003 itself, it is a very weak piece of

evidence on which No. implicit reliance can be had. For this purpose, the learned Counsel for the Appellant would rely on the judgment of the

Hon"ble Supreme Court in Union of India v. Bal Mukund reported in 2009 (2) Crimes 171 (SC) where in paragraphs 29 to 31 it is held as

follows:

29. The court while weighing the evidentiary value of such a statement cannot lose sight of ground realities. Circumstances attendant to making of

such statements should, in our considered opinion, be taken into consideration.

30. Concededly, the Act provides for a stringent punishment. We, for the purpose of this case, shall proceed on the assumption, as has been

contended by Mr Singh, that the prosecution need not examine any independent witness although requirements therefor cannot be minimised. (See

Ritesh Chakaravarty v. State of M.P. and Noor Aga.)

31. Where a statute confers such drastic powers and seeks to deprive a citizen of its liberty for not less than ten years, and making stringent

provisions for grant of bail, scrupulous compliance with the statutory provisions must be insisted upon. While considering a case of the present

nature where two persons may barely read and write Hindi, are said to have been used as carrier containing material of only 1.68% of narcotics, a

conviction, in our opinion, should not be based merely on the basis of a statement made u/s 67 of the Act without any independent corroboration

particularly in view of the fact that such statements have been retracted.

43. Relying on the above judgment, the learned Counsel would submit that since in this case, confession was retracted by A1 on 16.12.2003 itself,

the same cannot be considered as a voluntary one.

44. of course it is true that as has been held by the Hon"ble Supreme Court on several occasions, a retracted confession is a weak piece of

evidence. At the same time, it is too well settled by the Hon"ble Supreme Court that though the retracted confession is a weak piece of evidence,

nevertheless, if it inspires the confidence of the Court, the same can be the sole foundation for the conviction of the accused who has made the said

confession.

45. In the case on hand, though the first accused was produced before the learned Magistrate on 03.12.2003, he did not retract the confession.

The confession was retracted much belatedly only on 16.12.2003, probably on getting some legal advice. Therefore, the retraction made belatedly

will only go to show that the retraction is not true. In Kanhaiyalal's case referred to above, the Hon"ble Supreme Court in paragraph 40 has held

as follows:

40. It may also be recalled that though an application was made for retracting the confession made by the Appellant, neither was any order passed

on the said application nor was the same proved during the trial so as to water down the evidentiary value of the said statement. On the other hand,

in the absence of such evidence on record, the High Court had No. option but to proceed on the basis of the confession as made by the Appellant

u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Since it has been held by this Court that an officer for the purposes of

Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 42 thereof, is not a police officer, the bar under

Sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned

may be relied upon as a confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made

u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985, we see No. reason to interfere with the conclusion of the High Court

convicting the Appellant.

46. Very recently the Hon"ble Supreme Court following Kanhaiyalal's case in Ram Singh v. Central Bureau of Narcotics reported in 2011(2)

L.W. CrI. 16 has again held as follows:

12. From the plain reading of the aforesaid provision it is evident that a confession made by an accused is rendered irrelevant in criminal

proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise with reference to the

charge against the accused. A confession, if it is voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the

guilt of the accused. However, before solely acting on confession, as a rule of prudence, the Court requires some corroboration but as an abstract

proposition of law it cannot be said that a conviction cannot be maintained solely on the basis of the confession made u/s 67 of the Act.

13. Bearing in mind the principles aforesaid, now, we proceed to consider the facts of the present case. Appellant's first confession was recorded

by P.W.6, Jagdish Mawal on 19th July, 1997 and he was produced before the Court on 20th July, 1997 and he made No. grievance in regard to

the confession recorded. Another confession was recorded on 20th July, 1997 and, thereafter, he was produced before the Special Judge on 21st

July, 1997 and a copy of the police diary was handed over to him. This obviously would have contained the confessions made by him. No.

complaint about the same was made then also. Thereafter Appellant was produced before the Court several times but he never retracted his

confession. The Appellant retracted the confession made by him for the first time in his statement u/s 313 of the Code of Criminal Procedure. In

our opinion, when an accused is made aware of the confession made by him and he does not make complaint within a reasonable time, same shall

be a relevant factor to adjudge as to whether the confession was voluntary or not....

47. Keeping in mind the above settled position of law, when we look into the facts of this case, I do not find anything to suggest that Ex.P.4 was

not a voluntary confession. Also there is No. explanation offered as to why the same was not retracted when he was produced before the learned

Magistrate on 03.12.2003. Absolutely there is No. explanation for the delay. For these reasons, I hold that Ex.P.4 is a voluntary statement upon

which implicit reliance can be surely made. It is not the case where in order to substantiate the conviction of the first accused the prosecution has

relied only on the retracted confession of A1. As we have noticed, reliance is made on the evidences of P.Ws.1 to 3, 5 and 8 who are all eye

witnesses to the fact that the first accused was found in possession of the contraband viz., more than 10 kgs of heroin. The said eye witness

account has been duly corroborated by the confession made under Ex.A.4. Based on the above, in my considered opinion, the lower Court was

right in convicting the first accused, in which I do not find any infirmity at all.

48. Now coming to the case of the second accused, as I have already stated, the prosecution relies only on the statement under Ex.P.45 made by

the second accused and the confession of the co-accused viz., A1 made in Ex.P.4. The contention of the learned Counsel is that the confession of

A2 cannot be true and voluntary. For this purpose, the learned Counsel would submit that P.W.6 issued summons for the appearance of A2 on

24.12.2003. Accordingly, he appeared, but No. statement was recorded from him. Again, yet another summons was issued by P.W.9 on

25.12.2003, calling upon him to appear before him on 25.12.2003 and it was only on 25.12.2003, Ex.P.45 statement was given. From this, the

learned Counsel would submit that the accused was in continuous custody of P.W.9 from 24.12.2003 to 25.12.2003 and therefore the statement

cannot be held to be voluntary.

49. In order to substantiate this argument, the learned Counsel relied on the evidence of P.W.6, wherein, he has stated during cross examination

that on 24.12.2003, at about 5.30 p.m. he saw the second accused at his office. At that time, Ex.19 summons was served. Relying on this part of

the evidence, the learned Counsel would submit that from 24.03.2003 onwards, he was under the constant custody of the NCB officials. But a

perusal of the the evidence of P.W.6 would show that during the relevant time, he was not part of NCB department. He was only an Inspector of

Central Excise at Thoothukudi. Only on a request made by P.W.8, he searched the house of A2. He issued summons on 24.12.2003 to the

second accused to appear on 25.12.2003 before the NCB office. During cross examination, P.W.6 has further stated that on 24.12.2003, when

the second accused was seen at his office, the NCB officials were No. at all present and the NCB officials came to the office only on 25.12.2003.

Therefore the contention of the learned Counsel that from 24.12.2003 till 25.12.2003, he was in the custody of NCB officials cannot be

countenanced. Even the suggestion made to P.W.6 is only to the fact that he kept the second accused in his custody from 24.12.2003 morning

onwards. As I have already narrated, P.W.6 had nothing to do with NCB department. Thus, it is very clear that though the second accused was

seen at the office of P.W.6 on 24.12.2003, he was not in the custody of NCB officials till 25.12.2003. Only on 25.12.2003, in pursuance of the

summons he appeared before P.W.9 and gave the written statement voluntarily. Thus there is nothing on record even to suggest that the said

statement was made out of any coercion, compulsion, threat etc.,

50. It is submitted by the learned Counsel that Ex.P.45 statement was retracted without any delay and therefore this retraction is true which

renders the confession non-voluntary. As I have already discussed, the settled law is that if the retracted confession inspires the confidence of the

Court, there can be No. legal impediment to convict the accused solely on the basis of the said confession. In this case, except contending that the

second accused was seen at the office of P.W.6 on 24.12.2003, nothing else has been brought on record even to suggest that Ex.P.45 statement

was not a voluntary statement. Therefore, this statement by itself would be sufficient to convict the second accused. But as I have already held the

confession of A1 under Ex.P.4 is also voluntary. The said statement can be surely made use of against A2 also u/s 30 of the Evidence Act.

51. The contention of the learned Counsel is that the retracted confession of A1 is tainted and the same cannot corroborate the confession of A2

which itself is tainted. I do not find any force in the said argument. As I have already held, both the confessions of A1 and A2 are voluntary.

Further, as per the settled law, the confession of A1 itself is sufficient to sustain the conviction of A2. But in the case on hand, apart from the

confession of A2 the confession of co-accused (A1) is also available which lends assurance to the case of the prosecution. In such view of the

matter, the conviction of the second accused also needs to be sustained.

52. Now coming to the quantum of sentence, both the accused have been sentenced to undergo R.I. for 10 years and to pay a fine of Rs. one lakh

in default to undergo R.I. for one year for each offence. I do not find anything illegal in the quantum of sentence, both substantive as well as fine.

Having regard to the facts and circumstances of the case, I am of the view that the default sentence alone needs to be reduced.

53. In the result, the appeal is partly allowed in the following terms:

(i) The conviction of the first accused u/s 8(c) r/w 21(c) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is

confirmed. The substantive sentence and fine imposed by the Trial Court for the said offences are also confirmed. However, the default sentence

imposed for the non payment of fine for both the offences is reduced to rigorous imprisonment for one month.

(ii) The conviction of the second accused u/s 8(c) r/w 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is confirmed. The

substantive sentence and fine imposed by the Trial Court on him are also confirmed. However, the default sentence of rigorous imprisonment of

one year imposed is reduced to rigorous imprisonment for one month.

(iii) In all other aspects the appeal stands dismissed.