

Anjumon vs State of Kerala

Anjumon vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1338677

Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : CRL.A/130/2021

Appellant : Anjumon

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH ST
MONDAY, THE 31 DAY OF JULY 2023 / 9TH SRAVANA, 1945 CRL.A
NO. 99 OF 2021 AGAINST THE JUDGMENT DATED 08.01.2021 IN
SC(NDPS) NO.35 OF 2018 OF SPECIAL COURT (NDPS ACT CASES),
THODUPUZHA CRIME NO.1103/2017 OF KATTAPPANA POLICE
STATION APPELLANT/ACCUSED NO.2 (ACCUSED NO.10 AS PER
COURT CHARGE): BIJU, AGED 40 YEARS, S/O.RAGHVAN, PATHALIL
HOUSE, RAMAKKALMEDU KARA, KOMPAMUKKU BHAGOM,
PARATHODU VILLAGE. BY ADVS. P.VIJAYA BHANU (SR.)
SRI.P.M.RAFIQ SRI.M.REVIKRISHNAN SRI.VIPIN NARAYAN
SRI.V.C.SARATH SRI.AJEESH K.SASI SMT.POOJA PANKAJ SRUTHY

N. BHAT RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. SRI RENJITH GEORGE (PUBLIC PROSECUTOR) THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22.10.2021, ALONG WITH CRL.A.162/2021 AND CRL.A.130/2021, THE COURT ON 31.07.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH ST MONDAY, THE 31 DAY OF JULY 2023 / 9TH SRAVANA, 1945 CRL.A NO. 130 OF 2021 AGAINST THE JUDGMENT DATED 08.01.2021 IN SC(NDPS) NO.35 OF 2018 OF SPECIAL COURT (NDPS ACT CASES), THODUPUZHA CRIME NO.1103/2017 OF KATTAPPANA POLICE STATION APPELLANT/ACCUSED NO.4: ANJUMON, AGED 41 YEARS, S/O. GOPINATHAN, PUTHENPURACKAL HOUSE, MUNDIYERUMA BHAGOM, KALLAR KARA, PAMPADUMPARA VILLAGE, IDUKKI DISTRICT, PIN 685 514 BY ADVS. V.JOHN SEBASTIAN RALPH SRI.V.JOHN THOMAS SHRI.VISHNU CHANDRAN SHRI. RALPH RETI JOHN KUM. KEERTHANA SUDEV SHRI.APPU BABU SMT.SHIFNA MUHAMMED SHUKKUR RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM, KOCHI 31 SRI RENJITH GEORGE (PUBLIC PROSECUTOR) THIS CRIMINAL APPEAL HAVING BEEN HEARD ON 22.10.2021 ALONG WITH CRL.A.99/2021 AND CRL.A.162/2021, THE COURT ON 31.07.2023, DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH ST MONDAY, THE 31 DAY OF JULY 2023 / 9TH SRAVANA, 1945 CRL.A NO. 162 OF 2021 AGAINST THE JUDGMENT DATED 08.01.2021 IN

SC (NDPS) NO.35 OF 2018 OF SPECIAL COURT (NDPS ACT CASES), THODUPUZHA CRIME NO.1103/2017 OF KATTAPPANA POLICE STATION APPELLANT/3RD ACCUSED(2ND ACCUSED AS PER COURT CHARGE):

SHINO JOHN, AGED 42 YEARS, S/O.JOHN, PANTHANAL HOUSE, VAKKODAN CITY, SANTHAPARA KARA, SANTHAPARA VILLAGE, IDUKKI DISTRICT, KERALA. BY ADVS. P.K.SAJEEVAN SRI.T.ASAFALI SRI.M.K.FAISAL SRI.V.M.BIJUMON
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031. SRI RENJITH GEORGE (PUBLIC PROSECUTOR) THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22.10.2021, ALONG WITH CRL.A.99/2021 AND CRL.A.130/2021, THE COURT ON 31.07.2023 DELIVERED THE FOLLOWING:

MARY JOSEPH, J.

----- Crl.A. Nos. 99, 130 & 162 of 2021 -----

Dated this the 31st day of July, 2023

JUDGMENT

The above three appeals are originated from a judgment

passed on 08.01.2021 by Additional Sessions Judge (Special Court for NDPS Cases), Thodupuzha (for short trial court). The appellants are accused Nos.1 to 4 and each of them were found guilty by the trial court for the offence under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act) and was convicted and sentenced to undergo

rigorous imprisonment for ten years. Accused No.1 (Abin Divakaran) was also imposed with a fine of Rs.1,50,000/- and to undergo rigorous imprisonment for six months, in case of default of payment of fine, accused Nos.2 to 4 was also

sentenced to pay a fine of Rs.1,00,000/- and to undergo rigorous imprisonment for four months in default of payment of fine. Aggrieved thereby the appeals above were filed by accused Nos.2 to 4.

2. Set off was also allowed for three years and 130 days

already undergone by accused No.1 in judicial custody; one year and 132 days, for accused No.2(Biju) three years and 151 days for accused No.3 (Shino John) and 245 days for accused No.4 (Anjumon).

3. The case against accused Nos.5 and 12 were split up, accused No.6 was ordered as abated. Rest of the accused were found not guilty for all offences for which they faced trial.

4. Aggrieved by the Judgment finding them guilty for the offence under Section 21(c) NDPS Act and convicting and sentencing them as afore stated accused Nos.2 to 4 have preferred the appeals on hand.

5. The following arguments were raised against the above judgment in the appeal.

1. Non-compliance of Section 42.

2. Purposeful evasion of Section 52.

3. Non-preparation of proper inventory as required under

Section 52-A NDPS Act. 4.Non-compliance of Section 57 NDPS Act. 5.Tampering of contraband 6.Difference in contraband that was seized and that was produced at the Lab.

7. Delay in forwarding properties to Magistrate.

8. The finding of the Human Rights Commission.

9. Evidence of the detecting officer.

10. Improbabilities in the prosecution case.

6. The case was originated from the interception of a

Mahindra SX Car bearing Registration No. KL-08/AS-7436 driven by one Mr.Abin Divakaran at about 4 A.M on 20.08.2017 at Edassery Junction in Puliyanmala-Kattappana road in Kattappana Village and seizure of Hashish Oil weighing 17.2 kgms from it by a team of police officers deployed there for combing duty under the leadership of the Sub Inspector of Police, Kattappana. The contraband was recovered from the vehicle, identified by the officers as Hashish Oil and unauthorised transportation of it being an offence, one person sitting in the driver seat escaped and others were arrested then and there. The contraband was seized and the occupants of the car, except the driver, who fled off therefrom were arrested after making them convinced off the grounds of their arrest. The accused alongwith the contraband

seized were produced at the Kattappana police station and Crime No.1103/2017 was registered alleging that they have committed the offence punishable under Section 21(c) NDPS Act.

7. The investigation was conducted by the Sub Inspector

of Police, Kattappana Police Station and was continued by the Deputy Superintendent of Police of District Crime Branch, Idukki. The only offence initially alleged against the accused in Crime No.1103 of 2017 was one punishable under Section 21(c) of the NDPS Act.

8. Investigation was proceeded to find out the source wherefrom Hashish oil reached the hands of the accused and for that purpose, the accused were arrested and remanded to

judicial custody from 20.08.2017 till 02.09.2017. It has been the case of the prosecution that arrest intimation was given to the relatives of the accused prior to their arrest itself and the properties seized were forwarded to the court after preparing list of properties in 151(A) Form. According to the prosecution, the accused were arrested in due compliance of the directions issued by the Apex Court pertaining to arrest of accused, in its letter and spirit.

9. During the course of investigation, involvement of

eight more persons, who have sponsored money for manufacture of the Hashish and have taken part in the conspiracy while planning the commission of the offence. Accordingly, the investigating agency by report, apprised the court, of their involvement and sought to add them in the array of accused, as perpetrators of the commission of the crime in different roles. Investigation was pursued with on that line.

10. On the strength of the evidence collected by the

investigating agency with regard to the involvement of the additional accused, offences under Sections 27A and 29 NDPS Act were also incorporated. Concluding the investigation, a final report was prepared and laid before the special court, Thodupuzha, charge-sheeting the accused for offences punishable under Sections 21(c), 27A and 29 of NDPS Act.

11. Investigation was progressed in the crime and that unveiled the involvement of others also in a conspiracy with the

above accused, prior to the commission of the offence. Ultimately, the investigating agency apprised that factum to the special court by a report and the investigation was continued on that line. On completion of the investigation, a final report was also laid.

12. The allegations raised by the prosecution against the accused in Final Report is extracted hereunder:

() 1- 1 12 20 17.200 17 KL-08-AS-7436- - 20-08-2017 4 1- 1- 2 4 1, 3, 5 ,
1 6- 1- , 6- 2 1- 1- 5- 7- 3- KL-38-F-2777- 4 25 5000 8- 9- 2015 1- 10- 10-
12- 8- 9-

1- 8- 9- 1- 3- 5- 25 . 3- KL-7-C 6015 11- 1 12 LARGE QUANTITY Section
:21(C), 27 (A), 29 of NDPS Act .

13. The special court took the final report on its file. On

being convinced of a prima facie case against all accused, summons was issued to each of them. They entered appearance through counsel of their choice. Both the learned Public Prosecutor and the counsel representing each accused were heard elaborately. Upon evaluating the arguments advanced and perusing the records made available by the prosecution, charge was framed by the special court. The court charge undoubtedly is a crucial document upon which alone, the proposed trial could be proceeded against the accused.

14. Charge was framed in two parts. The one firstly framed on 18.12.2018, reads :

That you, A1 to A9 and the co-accused on a date prior to 20.08.2017, have agreed each other to extract Hashish Oil in violation of the provisions of NDPS Act and thereby committed an offence punishable under Section 29 of NDPS Act within the cognizance of this Court. As per the originally framed charge, accused A1 to 9 were

alleged as agreed among themselves to extract Hashish Oil in violation of the provisions of the NDPS Act and thereby committed the offence punishable under Section 29 NDPS Act. Accused No.4 was alleged in addition as contributed funds to deal with the Hashish oil following an agreement executed among themselves after availing a loan of `2,00,000/- prior to 20.08.2017 and participated in its sale, in total violation of the provisions of the NDPS Act and thus also charged for commission of an offence punishable under Section 27A NDPS Act.

15. Accused No.5 was alleged as gone to Chennai along

with one Sri.Biju Abraham on a date prior to 20.08.2017, removed the door pads of an Innova Car bearing Registration No.KL-38F-2777 brought by the 2nd accused, removed and kept 26 packets of ganja oil there and received `5,000/- as consideration for the service and thereby charged for commission of an offence punishable under Section 27A NDPS Act.

16. Accused Nos.6 and 7 were alleged as purchased

grinding machine assembled by accused No.8 as required by accused No.1, on a date prior to 20.08.2017 from the workshop at Thankamony owned by accused No.8 and took that to the Railway Station at Aluva and further to Dharakonda at Visakapattanam by train, in violation of the provisions of the NDPS Act and thus charged for commission of an offence punishable under Section 27A NDPS Act.

17. Accused No.1 together with Accused Nos.6 and 7 was alleged as extracted Hashish Oil at Dharakonda, on a day prior to 20.08.2017 in violation of the provisions of the NDPS Act and thus charged for commission of an offence punishable under Section 27A NDPS Act.

18. Accused No.1 alongwith Accused Nos.3 and 5, who

allegedly brought Hashish Oil from Chennai to Santhanpara and transported it in a Jeep bearing Registration No.KL-7C 6015 possessed by accused No.3 to Panickankudy and kept that concealed under a rock in a lonely place with the aid of accused No.9 in violation of the provisions of the NDPS Act and therefore charged for commission of an offence punishable under Section 27A NDPS Act.

19. Accused Nos.1 to 3 alongwith others were alleged as

transported Hashish Oil, in a vehicle bearing Reg.No.KL-08/AS- 7436, driven by accused No.1, at 4:00 a.m., on 20.08.2017, to Edassery Junction area through Puliyanmala-Kattappana road in Kattappana Village, in violation of the provisions of the NDPS Act and thus charged for commission of an offence punishable under Section 21(c) NDPS Act.

20. The charge framed by the Special Court on 09.05.2019 against accused No.10, after his surrender is extracted hereunder:-

That you, A10, Biju Raghavan (A2 in the original charge) and the co-accused, A1 to A9 and the absconding accused on a date prior to 20.08.2017, have agreed each other to produce and sell Hashish oil in violation of the provisions of NDPS Act and thereby committed an offence punishable under Section 29 of NDPS Act within the cognizance

of this Court.

Therefore accused No.10 was alleged to have participated in the conspiracy with accused Nos.1 to 9 to manufacture and sell Hashish oil on a day prior to 20.08.2017 in violation of the provisions of the NDPS Act and thereby charged for commission

of an offence punishable under Section 29 NDPS Act. He was alleged as taken part in the transportation of 17.200 Kgs of Hashish Oil along with accused Nos.1 to 3, at 4:00 a.m., on 20.08.2017 in a vehicle bearing Reg.No.KL-08 AS-7436 driven by accused No.1 at Edassery Junction situated in Puliyanmala- Kattappana road in Kattappana Village in violation of the provisions of the NDPS Act and thereby charged also for commission of an offence punishable under Section 21(c) NDPS Act.

21. Charge was also amended by the Special Judge on 30.04.2019, as hereunder:-

That you, A1 to A9 and the co-accused on a date prior to 20.08.2017, have agreed each other to produce and sell Hashish oil in violation of the provisions of NDPS Act and thereby committed an offence punishable U/S 29 of NDPS Act within the cognizance of this court. That, A4, Suresh (A6 in Police charge (dead)), in pursuance of the said agreement, on a date prior to 20.08.2017 availed a loan of `2,00,000/- and given to you, the first accused for meeting the expenses in connection with production and sale of Hashish oil in violation of the provisions of NDPS Act and thereby

committed an offence punishable U/S 27A of NDPS Act within the cognizance of this court. That you, A5 Bibin (A7 in Police charge) alongwith A1 and co-accused, Biju Abraham, in pursuance of the said agreement, on a date prior to 20.08.2017, had gone to Chennai and removed door pads of Innova Crystal Car KL-38-F-2777 brought by second accused, Shino John (A3 in Police charge) and placed 26

packets of ganja oil in the door pads of the vehicle and received `5,000/- in violation of the provisions of NDPS Act and thereby committed an offence punishable U/S.27A of NDPS Act within the cognizance of this court. That you, A6 Jobin Abraham (A8 in Police charge) and A7 Anandu Shaji (A9 in Police charge), as required by A1, in pursuance of the said agreement, on a date prior to 20.08.2017 purchased grinding machine made by A8 Renjith (A10 in Police charge) and absconding accused, in the workshop, at Thankamony owned by A8 Renjith (A10 in Police charge) and brought to Aluva Railway Station and then to Dharakonda at Visakhapattanam by rail in violation of the provisions of NDPS Act and thereby committed an offence punishable U/S 27A of NDPS Act within the cognizance of this court. That you, A1 along with A6 Jobin Abraham (A8 in Police Charge) and A7 Anandu Shaji (A9 in Police charge), in pursuance of the said agreement, on a date prior to 20.08.2017, i.e. in the month of December 2015 produced Hashish oil at Dharakonda in Vishakapatnam in violation of the provisions of NDPS Act and thereby committed an offence punishable

U/S.27A of NDPS Act within the cognizance of this court. That you, A1 along with A2 Shino John (A3 in Police charge) and co-accused Biju Abraham, in pursuance of the said agreement, on a date prior to 20.08.2017, brought Hashish oil from Chennai and concealed the same in a cardamom plantation in Vakkodan city and that you, A1 sold 1 kg out of the said Hashish oil with the assistance of Suresh (A6 in police charge)(dead) in violation of the provisions of NDPS Act and thereby committed an offence punishable U/S.27A of NDPS Act within the cognizance of this court.

22. In the charge the status of the accused in the final report was shown by the Special Court in the following manner:

Status of Name of the Status of Accused in Final accused accused Report in Court Charge A1 Abin Divakaran A1 A2 Biju Raghavan A10 A3 Shino John A2 A4 Anjumon A3 A5 Biju Abraham Split up A6 Suresh A4 A7 Bibin A5 A8 Jobin

Abraham A6 A9 Anandu Shaji A7 A10 Renjith A8 A11 Vincent A9 A12 Shaji Kumaran Split up Portions emphasized are the areas caused to be incorporated by the Special Judge in the original charge by way of amendment.

23. Material changes were not brought in by the

amendment but only correction of certain clerical mistakes. Thus, accused Nos.1 to 9 stood charged for offences punishable under Sections 29 and 21(c) of NDPS Act and accused Nos.4 to 7 and 10, for an offence punishable under Sections 27A NDPS Act. All accused faced trial on the basis of the accusations raised against them in the charge framed as above.

24. Accused Nos.7 to 11 (accused Nos.5 to 9 as per the

court charge) were acquitted of all offences charged against them and they faced trial and were set at liberty after cancellation of the bail bonds executed by each of them. Accused Nos.1 to 4 (Accused Nos.1, 10, 2 & 3 as per the court charge) were acquitted for the offence under Section 29 NDPS Act for which they faced trial. Accused Nos.1 & 3 were acquitted

for the offence under Section 27A NDPS Act for which they stood charged. Accused Nos. 1 to 4 (Accused Nos.1, 10, 2 & 3 as per the court charge) were found guilty of an offence punishable under Section 21(c) NDPS Act for possession and transportation of commercial quantity of Hashish oil, convicted and sentenced as afore stated. Therefore, the only offence for which the appellants were found guilty, convicted and sentenced was the one punishable under Section 21(c) NDPS Act.

25. Section 21(c) being the only offence for which

appellants were found guilty, convicted and sentenced and a challenge being raised against that, it is incumbent upon this Court to delve into the question, whether the prosecution has successfully proved their guilt for that offence beyond reasonable doubt.

26. As per the allegations in the chargesheet, accused had

conspired among themselves prior to the manufacture of Hashish oil at Dharakonda in Vishakapatnam and thereafter, accused Nos.1 to 4 transported that in a car bearing Reg.No.KL- 8-AS-7436 for sale. Therefore, as per the allegation of the prosecution, on a day prior to 20.08.2017, Hashish Oil was manufactured and it was transported in a vehicle bearing Registration No. KL-08-AS-7436 intending thereby to sell it. The charge was framed by the Special Court based on the above

allegations and therefore that incorporates all the ingredients constituting the offence under Section 21 (c) NDPS Act.

27. The charge framed, when read over and explained to

the respective accused, by the special court, each of them pleaded not guilty and faced trial. Prosecution examined PWs 1 to 16, marked Exts.P1 to P62 and identified MOs 1 to 31 in evidence. Accused No.6 was reported dead before closure of the prosecution evidence and therefore the case against him was dropped as abated.

28. Independent evidence regarding detection, search,

seizure and arrest was attempted by the prosecution to be established by examining PWs 1 and 2. But, the witnesses during examination opted to state facts contrary to that recorded by the prosecution under Section 161 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C). PW1 admitted to have authored signatures in the seizure mahazar and the arrest memos marked in evidence respectively as Exts.P1 and P2 series. Admittedly signature was also authored by PW2 in Ext.P1.

29. PW3 deposed that as directed by accused No.1 (Abin Divakaran), money entrusted to her by accused No.6 (Suresh - deceased) was transferred to him through her accounts.

30. PW4 was a witness to the seizure mahazar prepared

during a search conducted in a pit where the contraband, marked in evidence as Ext.P4 was allegedly buried. Admittedly the search list prepared for the alleged seizure of a mobile phone and a pawn ticket from the house of accused No.3 (Shino John) was signed by him. Admittedly, signature was also authored by him in Ext.P3, but denied the one in Ext.P4 and thus, he turned unloyal to the prosecution. PW5 admittedly authored signature in Ext.P4.

31. PW6 admitted to have attested the seizure mahazar

prepared during seizure of the mobile phone from the place of occurrence in the presence of accused No.1 (Abin Divakaran), which is marked in evidence as Ext.P5.

32. The officer who had detected the offence was examined as PW7. He had spoken about the search of the car, seizure of the contraband therefrom and arrest of accused Nos.2

to 4 (Accused 10, 2 and 3 as per the court charge). Ext.P1 (seizure mahazar), Ext.P2 series (arrest memos 3 in Numbers.) Ext.P7 series (inspection memos 3 in numbers.) and Ext.P8, (the crime registered with reference to the incident in question) were proved through him.

33. List of properties prepared by PW7 after seizure of

MO1 to MO7 series from the accused was marked in evidence as Ext.P9. Cash worth `4,010/-, an identity card, a pan card and a Vivo mobile phone seized from accused No.2 (Biju Raghavan) were also identified by him and marked in evidence as MOs 1 to

4. Cash of `180/-, a driving licence and a mobile phone seized

from accused No.4 (Anjumon) were also identified by him and marked in evidence as MOs 5 to 7. A report allegedly prepared by PW7 under Section 57 NDPS Act and claimed to have been forwarded to his immediate superior officer is marked in evidence as Ext.P10. Inventories of properties seized from the spot as well as from various other places were also prepared by him and forwarded to the

jurisdictional Magistrate for verification and certification of correctness of the properties seized and those were marked in evidence respectively as Exts.P12 and Ext.P12(a). Photographs of the properties(63 No.s) taken during verification and certification by the Magistrate were marked in evidence as Ext.P13 series.

34. List of properties prepared by him and forwarded to the court was marked in evidence as Ext.P14. The contraband contained in 17 packets after drawal of samples were also

identified and marked in evidence as MOs 8 to 24. 17 numbers of samples have been drawn from the contraband in the presence of the Magistrate and those were identified and marked in evidence as MO 25 series. The jute sack and the black plastic cover wherefrom the contraband was recovered were also identified and marked in evidence as MOs 28 and 29 respectively. The chilly powder allegedly recovered from the car and samples drawn therefrom were also identified and marked in evidence respectively as MO 30 and MO 31 series. Proceedings issued by the Magistrate while drawing samples from the contraband and while taking photographs, narrating the formalities performed was also marked in evidence as Ext.P15.

35. Sub-Inspector of Kumily Police Station who

accompanied PW7 as a member of the team deployed for combing duty was examined as PW8. He was examined to have support to the version of PW7 about detection, search and seizure of the contraband, arrest of accused Nos.2 to 4 and other associated performances at the spot.

36. Prosecution examined PW9 to establish that the Tavera car allegedly used for transportation of the contraband was availed by accused No.7 (Bibin) on a rental basis. He did

not support the prosecution case and the material part where he deviated from the version recorded from him during investigation was marked in evidence as Ext.P6.

37. Witness examined by the prosecution as PW10 has spoken about renting out of his Innova Car to accused No.3 (Shino John) as requested by accused No.1

(Abin Divakaran) for

transportation of the contraband from Tamil Nadu. He turned unloyal to the prosecution by deposing contrary to that stated before the investigating officer and recorded by the investigating officer. The relevant portion is marked in evidence as Ext.P17. PWs 11 and 12 were examined to prove the mahazar prepared when the Innova Car was taken into custody and marked in evidence as Ext.P18. By disowning the signatures found in Ext.P18, they turned unloyal to the prosecution.

38. Substantial part of the investigation was conducted by

the Inspector of Police, examined as PW13. Accused Nos.1 and 5 to 12 were arrested by him. Exts.P3 to 5, P19 to 55 and MOs 26 and 27 were also marked in evidence through him. Seizure mahazar prepared during seizure of the Nokia Phone from accused No.1 and the search memo prepared prior to proceeding to search the house of accused No.3 were respectively marked in

evidence as Exts.P25 and 20. The site plan procured by him was also marked in evidence as Ext.P48.

39. The Manager of the Bank where an account was

maintained by PW3 was examined as PW14. He deposed that `30,000/- has been transferred from the account of PW3 to that of accused No.1, and that truly corroborates with the version of PW3 during examination. Certified copies of the bank account statements of PW3 and accused No.1 were also produced and marked in evidence respectively as Exts.P 60 and 61.

40. The Deputy Superintendent of District Crime Branch, who laid the final report in the case on hand was examined as

PW16. Exts.P56 to 59 were marked in evidence through him which incorporate, the certificate of chemical analysis of the sample of the contraband as well as the certificate of registration of Maruti SX4 Car, marked in evidence respectively as Exts.P59 and 58.

41. Accused No.2 (Biju Raghavan) examined DWs 1, 2, 4 and 7 and marked Exts.D2 to 4 and Exts.D6 to 15 in evidence. On the side of accused No.3 (Shino John), DWs 5, 6 and 8 to 12 were examined and Exts.D6 and D16 to D27 were marked. A report of voice spectrography was also obtained and marked in evidence by accused No.3 as Ext.X2. Accused No.4 (Anjumon) examined a witness as DW3 and marked Ext.X1.

42. The Secretary of the Kattappana Bar Association in

the year 2008 was examined by accused No.2 as DW1. According to him, accused No.2 was abused by PW13 in an incident occurred in the year 2008 and had a settlement talk on the issues involved, later.

43. Wife of accused No.2 was examined as DW2. She

identified the ATM cards, two in numbers and marked in evidence as Exts.D3 and D4. Accused No.2 during examination as PW13 also attempted to establish that accused No.2 was arrested much earlier to the alleged incident.

44. A member of Human Rights Commission was examined as DW3. He deposed that based on a report prepared on the basis of a petition filed by the wife of accused No. 4

(Anjumon) alleging that the detecting officer as well as investigating officer were prejudicial against accused No.4 for raising voices frequently against the police officials as a politician that the investigation was handed over to another agency.

45. An Advocate of Kattappana Bar association was examined as DW4 with a view to establish that accused No.2 also suffered insult from PW13.

46. A neighbour of Accused No.3 (Shino John) was examined as DW5 with a view to establish that he was arrested

in between 1.30 and 2 oclock on 20.08.2017. The wife of Accused No.3 was also examined as DW5 and her version finds corroboration with that spoken by DW5 regarding the time of arrest of accused No.3 from his house at Santhanpara, much prior to his arrest allegedly effected by the prosecution.

47. Accused No.2 (Biju Raghavan) mounted the witness

box and deposed as DW7 that he was falsely implicated in the case. Materials were also marked in evidence as Exts.D6 to D11 to substantiate his version. Certified copy of a final report laid in some other case was marked in evidence as Ext.D12 to establish that PW2, the attesting witness was a stock witness of the prosecution. G.D entries were also summoned and marked in evidence as Exts.D13 to D15 to establish the falsity in the case alleged by the prosecution that PW8 and CWs 12 to 22 had accompanied PW7 to the place of occurrence as members of the team deployed for combing duty.

48. An official of BSNL was summoned to produce details of calls from the mobile phone of accused No.3. He attended the court but the documents called for were not produced. He was examined as DW8.

49. A reporter of Manorama News was examined as DW9

to prove the CDs containing a news item and those were marked in evidence through him respectively as Exts.D17 and D17(a) with a view to establish that what have been spoken by the District Police Chief, Idukki in a Press Meet and telecasted by Manorama News about the interception of the car, search, seizure and arrest of the accused was entirely different from the version spoken by the investigating officer on those counts in the case in hand.

50. An Advocate who had downloaded the news items telecasted in Manorama News Kuttapathram and Kairali Channel in 3 Compact Discs, was examined as DW10 and the Compact Discs produced were marked in evidence respectively as Exts.D17, D19 and D21. The manuscripts of the news items were also produced by him and marked in evidence as Exts.D18 and D20. Certifications of genuineness of Exts.D17 and D21 were marked in evidence respectively as Exts.D22 and D23. The

printouts to establish that Exts.D17 and D21 were downloaded from the official website of the Youtube were marked in evidence as Exts.D24(a) and D25(a). A visual news item and printouts of the screen shots (9 in Nos.) at 10 seconds

interval were also marked in evidence respectively as Exts.D17(a) and D25 series. The Police Chief whose Press Meet was highlighted by accused No.3 was examined as DW11 and the voice contents disowned by him were marked in evidence as Exts.D17, D19 and D21. The News Producer of Manorama News was examined as DW12 and the Compact Disc that contains the news telecasted in Kuttapathram is produced by him and marked in evidence as Ext.D27.

51. On appreciation of the evidence adduced as above, the

trial court formed an opinion that the allegation of the prosecution against the accused is having merits and established beyond reasonable doubt. The trial court was also convinced from Ext.P59 certificate obtained after analysis of the samples of the contraband forwarded to the Chemical Examiners Laboratory that the contraband seized from the vehicle on the fateful day was nothing but Hashish Oil. The trial court was also convinced

that the contraband having a weight of 16 Kgms is commercial quantity and by their involvement in the transportation of the same, the accused Nos.1 to 4 have committed an offence punishable under Section 21(c) NDPS Act. Thus, they were found guilty of the offence, convicted and sentenced.

52. The above finding being assailed for several reasons

discussed supra, it is incumbent on this Court to see whether the trial court went wrong in appreciating the evidence on record in its proper perspective while arriving at a finding of guilt of the accused for the offence under Section 21 (c) NDPS Act.

53. An understanding of the ingredients constituting the offence being relevant in the context, Section 21(c) NDPS Act is extracted hereunder : 21. Punishment for contravention in relation to manufactured drugs and preparations.- Whoever, in contravention of any provision of this Act or any rule or

order made or condition of licence granted thereunder,

manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,

(a) xxxx

(b) xxxx

(c) where the contravention 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 but which may extend to two lakh rupees: Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

54. For the offence to be attracted the prosecution must

establish beyond reasonable doubt that, the accused were in possession of the alleged contraband which is nothing but Hashish Oil coming within the purview of the NDPS Act, that it weighs more than 1 Kgm to form commercial quantity and that it was possessed in contravention of the provisions of the NDPS Act or rules framed thereunder or any order issued under the Act and the terms and conditions of the licence if any stood issued in favour of the accused. Therefore, in the appeal on hand, it is incumbent on this Court to see from the evidence stands adduced by the prosecution and already on record, whether the

prosecution has successfully established the ingredients constituting the offence beyond reasonable doubt.

55. Possession and transportation of commercial quantity

of Hashish Oil in a vehicle bearing Registration No.KL-8-AS-7436 are the basic allegations raised by the Prosecution against accused Nos.1 to 4 in the case on hand. The Sub Inspector of Police, Kattappana Police Station was examined as PW7. According to him on 20.08.2017 at 4 a.m. while he was discharging the combing duty for which he was deployed by the District Police Chief, along with

the Sub Inspector of Kumali Police Station, the Sub Inspector of Police, Vandiperiyar Police Station and some other police officials, a Maruti SX4 Car was found proceeding from Puliyanmala towards Kattappana direction through Puliyanmala-Kattappana road. The car was intercepted at Edassery Junction. The man sitting in its driving seat, responded stating the destination of their journey as Ernakulam.

56. One man was found sitting in the front left seat and

two others were found sitting in the rear seats. He expressed the need to inspect the car, but, all of a sudden, the driver opened the door of the car, pushed him aside and took to his heels. Though he was chased by members of the combing team, he escaped. The car was examined then and a jute sack containing something was found kept in the middle space of the rear seats of the car where accused Nos.3 and 4 were sitting. The jute sack was opened by him and seventeen polythene packets were found

kept inside. Those were opened and the contents were ascertained after examination as Hashish oil. Accused Nos.2 to 4 were arrested after preparing arrest memos. Address of each of the accused were collected. The electronic weighing machine available with the investigation kit being inadequate for weighing the contraband, a weighing machine was brought from the canteen of Kattappana Police Station through a police official.

57. The ganja oil contained in 17 packets were weighed

together and found as 17.200 kgms. Chilli powder was also found kept inside the car. 17 packets of Hashish oil, the jute sack, black polythene covers and the chilli powder were seized. A seizure mahazar was prepared describing all the formalities complied with at the spot and it was marked in evidence as Ext.P1. Each packets were wrapped with brown paper and the official seal was affixed. Labels where signatures of accused and witnesses have been obtained, were also pasted on each of the packets seized. Arrest intimation was given by him and marked in evidence as Ext.P6. Thereafter, he arrived at Kattappana Police Station with the accused and the properties were seized and registered a crime, the FIR

was marked in evidence as Ext.P8.

58. After arrival at the Police Station, accused No.2 handed over currency notes worth `4,010/-, I.D. Card, PAN Card

and a Vivo mobile phone, to PW7 and those were identified by him during examination and marked in evidence as MOs 1 to 4. Accused No.4 also handed over currency notes worth `180/-, driving licence and an Apple mobile phone to PW7 which on identification by him were marked in evidence as MO5 series and Mos 6 & 7. Inspection memos were prepared and marked in evidence as Ext.P7 series. List of the properties seized from the car at the spot of detection and those, from the accused at the Police Station. Those were marked in evidence as Exts.P9 and

14. Application was prepared for drawing of representative

samples from the contraband which was forwarded to the court is marked in evidence as Ext.P11. On the very day, the accused, the properties seized and the various documents prepared were produced at the official residence of the Magistrate. The accused was remanded by the Magistrate to judicial custody by its order. The properties were returned by the Magistrate to be kept in the safe custody of PW7 and a direction was issued to produce those before the court on the day following. The properties were kept by PW7 in his safe custody and produced those alongwith

articles required for drawing representative samples. He also made arrangements for taking photographs of the procedures performed while drawing representative samples from the contraband.

59. Samples two in numbers were drawn from each of the

17 packets of the contraband as well as the chilli powder. The samples drawn and the remnant of the contraband were packed and sealed alongwith the photographs taken and marked in evidence as Ext.P13 series. Those were handed over by the Magistrate at 6.15 p.m. on 21.08.2017 to PW7 for production before the Special Court. The properties were kept by him in his safe custody till production of those

before the Special Court on the day following. 17 packets containing the contraband left

after drawing samples were identified by PW7 during examination and were marked in evidence as MOs 8 to 24. The representative samples drawn from each of the 17 packets of contraband were packed together in a single packet which was marked in evidence as MO 25 series. The jute sack, black polythene covers, the chili powder remained after drawing samples were marked in evidence as MOs 28 to 30. The samples of chilli powder drawn were marked in evidence as MO31 series.

60. A report was prepared by PW7 narrating the entire formalities performed at the spot and forwarded to his superior

officer, which was marked in evidence as Ext.P10 and the superior who received it was examined as PW13. An inventory was also prepared by PW7 and that is marked in evidence as Ext.P12. Certification by the Magistrate about correctness of the properties obtained in Ext.P12 is marked in evidence as Ext.P12(a). The photographs taken of the various formalities performed before the Magistrate were marked in evidence as Ext.P13 series. Proceedings made regarding the production of the contraband and drawal of the sample is also marked in evidence as Ext.P15.

61. The Sub Inspector of Kumily Police Station who

allegedly attended the combing duty with PW7 was examined as PW8. He deposed in detail about the interception of the vehicle, arrest of accused Nos.2 to 4 and seizure of the contraband and his version finds corroboration with that spoken by PW7.

62. Both PWs 7 and 8 have spoken about their

deployment for combing duty by an order issued by the District Police Chief, which is marked in evidence as Ext.P62. The District Police Chief, examined as DW11 has categorically stated that PWs 7 and 8 were sent by him for combing duty at Puliyanmala road on 20.08.2017 during which course the contraband was seized.

Both PWs 7 and 8 have also spoken categorically about the recovery of the jute sack from the middle space of the rear seats, occupied by accused 3 and 4.

63. Independent witnesses were also examined by the

prosecution as PWs 1 and 2. They denied to have witnessed the search and seizure of the contraband and thus turned unloyal to the prosecution. But, they admitted their signature in Ext.P1 seizure mahazar and Ext.P2 series of arrest memos.

64. It is settled law that official witnesses if corroborated

on material aspects of detection, search and seizure of the contraband and arrest of the accused would form basis for arriving at a finding of guilt. PWs7 and 8 were official witnesses and when their versions corroborate in material particulars, there is nothing wrong for the prosecution to claim on its basis

that its case is proved beyond reasonable doubt. But, independent witnesses were also examined by the prosecution in the case on hand. PWs 1 and 2 to have independent support to its case. They turned against the prosecution case by deposing to have not been available at the spot to witness the seizure of the contraband. They also did not support the specific case of

the prosecution that signatures in Exts.P1 and P2 Series were authored by them after preparation of those at the spot itself.

65. It was contended by Sri.Vijaya Bhanu, the learned

Senior Counsel that conscious possession of the contraband by the accused is the basic and crucial aspect to be proved in the case on hand. PWs7 and 8 have spoken that the contraband was recovered from the space in between the rear seats occupied by two of the accused. As already stated, independent witnesses allegedly available at the spot and witnessed the transaction turned hostile by denying to have seen the transactions.

66. Then the question comes whether the corroborative

versions of PWs 7 and 8 would help the prosecution in its venture to establish that accused 1 to 4 were available in the vehicle as its occupants at the relevant time of seizure of the contraband. Or in other words whether it could satisfactorily be drawn from the oral evidence of PWs 7 and 8 that accused 1 to 4 were available in the car on 20.08.2017 at 4 a.m., when it was

intercepted by PW7 and the contraband was recovered therefrom. PWs 7 and 8 deposed corroboratively that the two accused, who were occupying the rear seats on either side had extended their respective hands over the jute sack kept amidst the seats, wherefrom the contraband was recovered. It has been settled by the Apex Court as well as various High Courts that the versions of official witnesses if survived the test of deep scrutiny, and found reliable can be based for a finding that the guilt

alleged against the accused is proved. The versions of PWs 7 and 8 did not suffer the vice of prejudice, inconsistency and discrepancy so as to disbelieve them. There is nothing in the context to disbelieve them. But, the question is whether conscious possession of the contraband stands established by the prosecution or not. Only when the prosecution is able to prove with clarity that the accused were in conscious possession of the contraband, then alone the presumption under Section 54 NDPS Act would be attracted to substantiate the prosecution case.

67. The contention mainly advanced by the learned

Senior Counsel was that the prosecution failed to establish that the accused were in conscious possession of the contraband. The learned Senior Counsel has relied on Avtar Singh and Ors. Vs. State of Punjab [(2002) 7 SCC 419] to fortify his contention that the prosecution cannot claim in the light of the evidence on record that the burden to prove conscious possession of the

contraband by the accused was not discharged by the prosecution. In Avtar Singh supra, Apex Court had elaborately dealt with the meaning and scope of conscious possession, which is extracted hereunder: -

The word 'possession' no doubt has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together but the minimum requisite element which has to be satisfied is custody or control over the goods. Can it be said, on the basis of the evidence available on record, that the three appellants one of whom was driving the vehicle and the other two sitting on the bags, were having such custody or control? It is difficult to reach such

conclusion beyond reasonable doubt. It transpires from the

evidence that the appellants were not the only occupants of the vehicle. One of the persons, who was sitting in the cabin and another person sitting in the back of the truck made themselves scarce after seeing the police and the prosecution could not establish their identity. It is quite probable that one of them could be the custodian of the goods whether or not he was the proprietor. The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods. For instance, if they are labourers engaged merely for loading and unloading purposes and there is nothing to show that the goods were at least in their temporary custody, conviction under Section 15 may not be warranted. At best, they may be abettors, but, there is no such charge here. True, their silence and failure to explain the circumstances in which they were traveling in the vehicle at the odd hours, is one strong circumstance that can be put against them. A case of drawing presumption under Section 114 of the Evidence Act

could perhaps be made out then to prove the possession of the accused, but, the fact remains that in the course of examination under Section 313 Cr.P.C, not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. The only question put to them was that as per the prosecution evidence, they were sitting on the bags of poppy husk. Strangely enough, even the driver was questioned

on the same lines. The object of examination under S.313, it is well known, is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. It is unfortunate that no question was asked about the possession of goods. Having regard to the charge of which appellants were accused, the failure to elicit their answer on such a crucial aspect as possession, is quite significant. In this state of things, it is not proper to raise a presumption under Section 114 of Evidence Act nor is it safe to conclude that the prosecution established beyond reasonable doubt that the appellants were in possession of poppy husk which was being carried by the vehicle. The High Court resorted to the presumption under Section 35 which relates to culpable state of mind, without considering the aspect of possession. The trial court invoked the presumption under S.54 of the Act without addressing itself to the question of possession. The approach of both the courts is erroneous in law. Both the courts rested their

conclusion on the fact that the accused failed to give satisfactory

explanation for travelling in the vehicle containing poppy husk at an odd hour. But, the other relevant aspects pointed out above were neither adverted to nor taken into account by the trial court and the High Court. Non-application of mind to the material factors has thus vitiated the judgment under appeal.

68. It is discerned from the discussion above that the

prosecution while on its move to establish commission of an offence by the accused of which, conscious possession is a basic and requisite ingredient, has to satisfy custody or control of him over the contraband recovered from the vehicle. True that it stands proved from the evidence of PWs 7 and 8 that accused 1 to 4 were in occupation of the car when it was intercepted by PW7 and his team of officers then in combing duty.

69. In the case cited, some of the occupants took to their heels on interception and the prosecution was unable to identify

them during investigation. The Apex Court observed in Avtar Singh supra that anyone of the persons escaped may be the actual custodian of the contraband seized from the vehicle. The Apex Court further observed that the persons who were merely sitting on the bags, in the absence of proof of anything more, cannot also be presumed to be in possession of the contraband seized from the vehicle. The Apex Court held that for failure of the trial court to examine the accused under Section 313(1)(b) Cr.P.C with reference to their possession which is the main and foremost incriminating element to attract the offence alleged against the accused, the prosecution cannot claim to have

established the guilt of the accused under Section 15 NDPS Act beyond reasonable doubt. Thus, the judgment of the trial court convicting the accused for the offence under Section 15 NDPS Act was reversed by the Apex Court in the case relied on.

70. The factual matrix of the case on hand needs an

analysis in the above backdrop. The learned Public Prosecutor during the course of his argument attempted to draw a distinction stating that the conveyance in Avtar Singh supra was a public vehicle and the one in the case on hand is a private one and therefore, the dictum laid in that case will not lend any support to the appellants.

71. Bearing in mind the argument advanced by the

learned Public Prosecutor, this Court ventured to see whether the legal position settled in Avtar Singh supra could be differentiated, on the basis of the nature of the vehicles.

72. It is indicated from Section 54 NDPS Act that the

presumption that the accused has committed the offence would operate in favour of the prosecution only on failure of the accused to account for the possession satisfactorily and it could only be done through a process of adducing cogent evidence to rebut the presumption. Therefore, it is incumbent upon the

prosecution to discharge its initial burden by establishing that the accused who were travelling in the car were in conscious possession of the contraband at the relevant time. Only when the prosecution would establish that, it can be taken to have discharged the initial burden and the presumption under Section 54 NDPS Act would operate and then it would be the onus of the accused to establish on the contrary.

73. It is pertinent to note that the accused who faced the trial in the case in hand were questioned with reference to the incriminating circumstances brought against them during examination of the witnesses of the prosecution. Each of them denied the incriminating circumstances put to them and maintained a stand of innocence and false implication.

74. Accused No.1 has put forth a case in defence that PW7

was in inimical terms with him since as a Bank Officer, he took part in the proceedings for recovery of the loan arrears from him and for that reason implicated him falsely in the case on hand. According to him, the mobile phone allegedly seized by the investigating officer in the crime and which formed part of the evidence on record does not belong to him. The financial transaction allegedly existing with accused No.6 was also denied by him. The alleged recovery of the car bearing Registration No. KL-08-AS-7436 on 19.08.2017 from his house and his arrest consequent to that were also denied by him.

75. Accused No.2 is an advocate by profession and had stated during examination under Section 313(1)(b) Cr.P.C that himself and PW13, the investigating officer were not in good

terms and owing to their strained relationship, he was falsely arraigned as an accused in the case on hand. The reason for formation of ill will of the Inspector of Police (CW33) towards him was also spoken by him during his examination before the court. He had also informed the court that following his arrest in the crime on hand on 19.08.2017, he was manhandled by CW33. His precise plea in the written statement filed under Section 313 (5) Cr.P.C was that he was arrested by PW7 and his party on 19.08.2017 while he was proceeding in his car through

Kattappana. According to him, the key of his car, ATM cards and a ring were seized from him and some of the seized items were later handed over to his wife, after obtaining a receipt from her.

76. Accused No.3 Shino John, a Clerk at the Panchayath Office and a temporary driver has also spoken that PW7 was in inimical terms towards him and therefore he was falsely

implicated only to wreck his vengeance. In the written statement filed, he has specifically stated that he was arrested by Mr. Jobi Thomas, the S.I of Police of Kumali Police Station while he was sleeping at his house at Santhanpara, taken to Vandiperiyar Police Station and falsely implicated into the crime. The search and the seizure alleged by the prosecution were denied by him.

77. After holding the examination of each of the accused

under Section 313(1)(b) Cr.P.C, both sides were heard under Section 232 Cr.P.C. Having not been convinced of the existence of a valid ground to record an order of acquittal, the accused were called upon to adduce evidence in defence.

78. Witnesses, 12 in numbers, were examined by the

defence and Exts.D1 to D27 were marked. Exts. X1 and X2 were also marked in evidence from the defence side. Ext.P62 was marked in evidence by the prosecution during defence evidence. Being an incriminating circumstance brought in evidence by the prosecution each of the accused were again questioned with reference to that under Section 313(1) (b) Cr.P.C.

79. Upon appreciating the evidence tendered by both sides as above and evaluating the arguments advanced by the

learned public prosecutor and the defence counsel, on behalf of each accused, the trial court arrived at a finding that the guilt of the accused Nos.1 to 4 for the offence under Section 21(c) NDPS Act is proved and convicted and sentenced them with punishments.

80. As per the prosecution case itself, the driver of the

vehicle after stopping it, opened the door, pushed PW7 aside and fled off and accused Nos.2 to 4 remained in the vehicle itself. Accused No.2 was sitting in the seat on the left side of the driver seat. Accused Nos.3 and 4 remained in the rear seats of the vehicle occupied by them at the relevant time.

81. When PWs 7 and 8 have deposed in a corroborative

manner that the vehicle bearing Registration No. KL-08-AS-7436 was found by the combing team at 4 a.m., that accused No.1 stepped down from the car on questioning about the reason for their being there, that failure of accused Nos.2 to 4 to give a cogent and precise answer for their presence in the vehicle as passengers at that point of time, that the contraband was

recovered from the middle space of the rear seats of the car and that the accused were arrested then and there, the presumption under Section 114 Evidence Act could undoubtedly be drawn in the case on hand.

82. The presumption referred to being an incriminating circumstance that stands against the accused, each of them also must be questioned with reference to that during examination under Section 313(1) (b) Cr.P.C.

83. Since the contraband was recovered by the officials

from the middle space of the rear seats of the vehicle where accused Nos.3 and 4 were sitting then, the presumption under Section 114 Evidence Act may be drawn against the accused, he must be questioned with reference to that, under Section 313(1)

(b) Cr.P.C and given an opportunity to explain it. None of the

accused was questioned with reference to the conscious possession of the contraband recovered from the car and thus a valuable opportunity to explain was also denied to them. The object behind examination under Section 313 Cr.P.C is to afford an opportunity to the accused to explain the circumstances appearing in evidence against them. Indisputably the accused were not questioned with reference to their possession of the contraband. Therefore, there is absolutely no

justification in

drawing presumption under Section 114 Evidence Act, on conscious possession.

84. The trial court made an observation in the Judgment

under challenge that presumption under Section 54 NDPS Act could be drawn, in favour of the prosecution, in the case on hand.

85. Section 54 of the NDPS Act being relevant in the context on hand is extracted hereunder for convenient reference:

"54. Presumption from possession of illicit articles.- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of:

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process

towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

86. Therefore, as envisaged by the provision itself unless

and until the contrary is proved in trials of cases involving offences coming within the purview of the NDPS Act, it may be presumed that the accused has committed an offence under the Act in respect of any articles prohibited to be possessed by

him and for the possession of which, he failed to account satisfactorily. Therefore, it is the burden of the prosecution to establish that the contraband was seized from the conscious possession of the accused. Only when that aspect has been successfully proved by the prosecution, the onus will shift to the accused to account for the possession legally and satisfactorily.

87. Evidence available on record is insufficient to hold

that the accused either jointly or individually was having possession of the contraband. Only when conscious possession of the contraband is proved and the accused failed to account for it reasonably, the presumption under Section 54 NDPS Act could be drawn to establish guilt against him for the offence under Section 21(c) of the NDPS Act.

88. In the case on hand the prosecution failed to establish conscious possession of Hashish Oil by accused Nos. 1 to 4 jointly or by any of them individually. As per the prosecution

case itself the contraband was recovered from the space left by the rear seats of the car occupied by accused Nos.3 and 4 therefore, neither the presumption under Section 114 Evidence Act nor the one under Section 54 NDPS Act would be attracted in the case on hand. Therefore, the trial court went wrong in holding that presumptions under Section 114 Evidence Act as well as Section 54 NDPS Act are attracted in favour of the prosecution and thereby to finding the accused guilty for the offence and convicting and sentencing them.

89. Sri.Vijaya Bhanu, the learned Senior counsel urged furthermore that samples were established by evidence as drawn from the contraband by the property clerk of the court as

per direction issued by the learned Magistrate. According to him, taking of sample by the Magistrate with the assistance of the property clerk was not comprehended by the provisions of NDPS Act.

90. According to the learned counsel, provisions of Cr.P.C

relating to issuance of warrant, arrest, search and seizure were not complied with by the prosecution in the case on hand. According to him, Section 51 NDPS Act provides that provisions of Cr.P.C. shall apply to all warrants issued and arrests, searches and seizures made under the NDPS Act in so far as they are not inconsistent with the provisions of the Act.

91. The learned counsel urged that in the case on hand,

the accused were arrested and the contraband were seized by the combing team formed as directed by the District Police Chief on the basis of an information received that Narcotic Substances are frequently transported through Kattappana-Puliyanmala road. The information was reduced by him into writing then and there itself, which is marked in evidence as Ext.P62.

92. Section 52 NDPS Act deals with disposal of the persons arrested and articles seized. It reads:- "52. Disposal of persons arrested and articles seized.-

(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to-

(a) the officer-in-charge of the nearest police station, or b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section

(3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article." (emphasis supplied)

93. It is substantiated from Ext.P15 that the combing team proceeded to the spot after getting information about the

frequent dealings of prohibited drugs there. Therefore, the officers forming the combing team (PWs 7 & 8) have reason to believe from the information obtained by the District Police Chief and given to them. Pursuant to that information, the combing team headed by PW7 was formed and they proceeded to the spot in the early hours of the day and while moving through the road leading to Kattappana from Puliyanmala, they found Maruti SX4 car bearing registration No. KL-08-AS-7436 proceeding through the road against them at 4 a.m and intervened. According to PWs 7 and 8, while about to question the driver of the car the reason of their travel at the relevant time, he alighted from the driver seat of the vehicle and took to his heels and could not be caught despite efforts made by the official.

94. Sri.Asif Ali, the learned counsel urged in the backdrop

that since the officials at the spot on combing duty being informed about the transportation of prohibited articles, and deployed to check it, they ought to have complied with the procedural requirements under Section 42 (1) NDPS Act

satisfactorily and for non-compliance of those, the trial held

against them is liable to be defeated.

95. As provided under Section 42 NDPS Act, an

authorised officer who has reason to believe either from his personal knowledge or information supplied by any person and taken down in writing that any Narcotic drugs, Psychotropic substance or controlled substance in respect of which an offence punishable under the Act has been committed or any document or other articles which may furnish evidence of the commission of such offence or any illegally acquired properties or any document or other article which may furnish evidence that any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of the Act is kept or concealed in any building, conveyance or enclosed place and that too between sunset and sunrise, whether compliance of Section 42(1) NDPS

Act is warranted in the case on hand or not, is primarily to be considered.

96. What is discerned from Ext.P62 was that an

information was obtained by the District Police Chief in general and it cannot be said to be a specific information about commission of any offence in particular by any person under the NDPS Act. Based on the information of frequent trafficking of drugs at the place, with a view to check it, a team of officers were deployed to find out the correctness of the information. Only when information is given about the commission of any offence in particular by a person, the direction in Section 42 NDPS Act needs to be complied with and that too, by an officer authorised under Section 42(1) NDPS Act. In the case on hand, true that the search of the vehicle spotted was prior to sunrise and after sunset, but a reliable information about commission of an offence by anyone, as contemplated under the provision was not obtained by PW7.

97. Section 51 NDPS Act provides that issuance of

warrant, holding of arrest of the accused, search and seizure of the contraband shall be in accordance with the provisions of Cr.P.C, if those are not in conflict with those under the NDPS Act. Section 52-A brought to NDPS Act by Act 2 of 1989 (with effect from 29.05.1989) by way of amendment provides for the procedure for drawing representative samples from the contraband seized. Section 52-A NDPS Act is extracted hereunder; "52-A. Disposal of seized narcotic drugs and psychotropic substances.-

(1) The Central Government may, having regard to

the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraint of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time,

determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance

has been seized and forwarded to the officer-in-charge of the nearest police station to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section

(1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian

Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the

Magistrate, as primary evidence in respect of such offence."

Under Clause (c) of Sub Section (2) of Section 52-A, representative samples of the contraband have to be drawn in the presence of a Magistrate.

98. The prosecution allegation was that accused Nos.1 to 4 were in possession of and transporting commercial quantity of

Hashish Oil in a Maruti SX4 car bearing registration No. KL-08 AS-7436 and in that process the combing team patrolling there under the leadership of PW7 intercepted the vehicle at 4 a.m. on 20.08.2017 at Edassery Junction in Puliyanmala-Kattappana road in Kattappana Village, seized the contraband and arrested accused 2 to 4. Accused No.1 was driving the vehicle at the relevant time, but, he took to his heels and escaped. The prosecution attempted to establish the case on hand by examining the officers in the combing team who were none other than the Sub Inspectors of Kattappana, Kumily and Vandiperiyar Police Stations as PWs 7, 9 and 10. Though independent witnesses who were available at the spot and attested the scene mahazar prepared from the spot as Ext.P1 were examined before the Court, they did not support the prosecution, by denying to have signed in Ext.P1 from the spot but admitted to have done it from the Police Station. PW7, the detecting officer deposed all aspects of the case in tune with the prosecution case. According to him, while they were attending their duty as members of the combing team constituted by direction issued by the District Police Chief, at about 4 a.m. on 20.08.2017, found a Maruti SX4 car bearing registration No. KL-

08-AS-7436 proceeding through Puliyanmala-Kattappana road in Kattappana Village. The vehicle was signalled to stop at Edassery Junction in Puliyanmala-Kattappana road. According to him, one person escaped from the spot. On examination of the car, the contraband kept inside was recovered. According to him, immediately after the seizure of the contraband, the persons travelling in the vehicle except the one who escaped from the spot were arrested after duly complying with all the procedural formalities to make the arrest legal. A seizure mahazar was also prepared describing all procedural formalities performed at the spot. PWs 8 and 9 also deposed the above aspects strictly corroborating with the

version of PW7. The contraband was packed in a brown paper where labels containing the signature of PW7, independent witnesses and accused were affixed. The packets were also tied up with twine and sealed with wax. Upon appreciation of the evidence, the Special Court found the above persons who were arrayed as accused 2 to 4 and the person arrested later on to have committed an offence for possession of Hashish Oil. Crime was registered against each of them for an offence under Section 21(c) NDPS Act. Section 21(c) makes possession, manufacture, sale, purchase, transportation, import

interstate, export interstate or use of any manufactured drug or any preparation containing any manufactured drug prohibited by the provisions of the Act or rule framed or order made or

conditions of licence granted thereunder, punishable with rigorous imprisonment for a term which shall not be less than ten years which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees, which may extend to two lakh rupees. It is provided thereunder that the Special Court may, after recording sufficient reasons in the judgment, impose a fine exceeding two lakh rupees.

99. In the case on hand, the allegations against accused

1 to 4 was that they have been in possession of Hashish/Ganja Oil in contravention of the provisions of NDPS Act. Through versions tendered by PWs 7 and 9, the prosecution claimed to have established possession of contraband by accused Nos.1 to 4, the trial court has observed in paragraph 80 of the impugned

judgment that conscious possession of the contraband by

accused No.2 (Biju) cannot be concluded. It was argued before the trial court that conscious possession cannot be attributed to accused No.2 (Biju) even if entire accusations advanced against him by the prosecution were taken for granted as true.

According to the learned counsel representing accused No.2, an allegation was totally lacking against him to the effect that he had handled the alleged contraband

in any manner, at any point of time. An allegation was not there to establish that financial assistance was given by him for the manufacture or procurement of the alleged contraband. There was not even an allegation that Sri.Biju had contacted any other accused over phone or through other means. There is also no case that Sri.Biju received any financial or other benefits from any other accused or persons allegedly involved in the transaction.

100. As per the prosecution allegations itself, Sri.Biju was

only travelling as a passenger in the vehicle. Solely for being an occupant in the vehicle wherefrom the contraband was seized, it cannot be said that he was in conscious possession of the same.

101. In M.B. Ramesh v. K.M. Veeraje Urs and Others

[(2013) 7 SCC 490] relied on by the learned counsel it was held

by the Apex Court that possession and ownership need not always go together and merely for the reason that a person was found sitting on the back side of a vehicle carrying poppy husk, a presumption regarding conscious possession cannot be drawn in the absence of any more evidence in that regard to establish that.

102. It is urged by Sri.Asaf Ali, the learned counsel on

behalf of the appellant in Crl.Appeal No.162/2021 that, the detecting Officer, an officer who was in the combing team and two independent witnesses were examined by the prosecution to establish the guilt of the accused. PWs1 and 2 were the independent witnesses and they turned unloyal by denying to have witnessed the alleged incident of detection of the contraband, seizure of the same from the car and the arrest of accused from the spot.

103. According to him, the alleged search and seizure were

consequent to the receipt of a prior information and PW7 by not reducing that information into writing and forwarding it to the superior officer, has violated the

mandates of Section 42 and 50(3) NDPS Act. According to him, in that context, the seizure of the contraband undoubtedly is illegal. According to him the District Police Chief had received an information over his phone from some source and the substance of the information was reduced by him into writing and it was marked in evidence

through PW3 as Ext.P62. According to him, the District Police

Chief after obtaining the said information and reduced that into writing, formed the combing team consisting of Sub Inspectors of Kattappana, Kumily, Vandiperiyar Police Stations and some other Officers and deployed them to the spot. According to him, a press meet was given by him after the alleged incident describing the seizure held as a trap.

104. According to the learned counsel, a trap could only be effected on obtaining a prior information or knowledge on transportation of contraband. According to him the trial court had observed in para 75 of the impugned judgment as follows:

The defence contention is that DW11 gave a different version regarding seizure. DW11 allegedly informed in the press meet that recovery was the result of a trap. If that be the case, the theory of chance recovery advanced by the prosecution shall fail. The accused No.2 feigned ignorance as to allegation only to project the so called versions in the press meet and hence the stand taken by the accused as to his unawareness would certainly be significant while considering his reliability.

105. Therefore, there is every reason to convince this Court that the trial court failed to appreciate the evidence on record in the correct perspective. According to him had the material objects viz CD (Manorama Channel), manuscript of

D17, D19, manuscript of D17, D20, manuscript of D19, D21 (CD Kairali News), certification of Ext.D17, certification of Ext.D-21 and printout of an official page of Manorama News and certification, certification and printout of Kairali News, photographs, 9 in Nos. and CD with affidavit, marked in evidence respectively as

MO 17, MO 17(a), D17, D19, D20, D21 to D27 were scrutinized by the trial court in the correct perspective, it ought to have reached a conclusion that the District Police Chief had prior knowledge about the alleged transportation of contraband in the vehicle and accordingly the combing team was arranged for detection and seizure of it.

106. In a context when argument as above was advanced

by the learned counsel, it is incumbent upon this Court to have a thorough scrutiny of Ext.P62 to find out whether it tantamount to an information to the District Police Chief regarding the transportation of contraband in the vehicle, as contemplated under Section 42 (1) NDPS Act.

107. The contents of Ext.P62 is extracted hereunder:

" 19.10.2017 , ." According to the learned Public Prosecutor, the above extract being not specific on the time, date, place and nature of the vehicle and also the person responsible for transportation of the contraband, cannot be said to be prior information as contemplated under Section 41(2) NDPS Act. Section 41(1) NDPS Act refers to the category of officers empowered to issue

warrant and authorisation. In Section 41(2) NDPS Act, the procedure to be followed by the above categories of officers if any of them have a reason to believe from personal knowledge or information given by any person that some person is involved in the commission of an offence punishable under this Act or that any Narcotic Drug or Psychotropic Substance or controlled substance in respect of which an offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired properties or

any document or other article which may furnish evidence of holding any illegally acquired properties, which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or place, he shall take such information or personal knowledge into writing and shall

proceed to the spot, search the place as the case may be and arrest the person responsible for keeping or concealing it.

108. It is provided under Sub-section (3) of Section 41

that the officers to whom warrant is addressed and officers authorised by them to arrest or search shall exercise all powers conferred on any officers acting under Section 42.

109. The officers authorised to transact under Sub-section

(2) of Section 41 NDPS Act if has reason to believe from

personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under the Act, or that any Narcotic Drug or psychotropic substance or control substances in respect of which an offence under the Act has been committed is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or constable to arrest such a person or search such a

building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or

place only after obtaining a warrant from a Magistrate empowered under sub-section (1) of section 41 of the Act and may enter into and search any such building, conveyance or place and seize such drug or substance or materials related to 2nd proviso says that if the officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of the offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

110. As per the prosecution case and as per the evidence

tendered by PWs 7 and 8 during trial, vehicle bearing Registration No.KL 8AS 7436 was intercepted by the combing team constituted by the District Police Chief

while discharging the duty entrusted by the latter, at a place 35 meters away from Edassery Resorts situated in Puliyanmala-Kattappana road. The car was proceeding from Kattappana to Puliyanmala. The time at which the vehicle was found and intercepted was 4 am on

20.08.2017. According to Pws 7 and 8 search was held

immediately after getting the vehicle stopped and a seizure mahazar was also prepared to establish compliance of the formalities required by law. Seizure mahazar is marked in evidence as Ext.P1 and as the description reveals, the search of the vehicle was done by PW7 at 4 am. Therefore, there is every reason to believe that the search of the vehicle and seizure of the contraband was after sunset and before sunrise.

111. But, it is provided in common under Sections 41 and

42 that the officers empowered to conduct the search, the seizure or the arrest of accused must do so after obtaining a warrant or authorisation and can avoid those only when they feel that the accused would escape in the time taken for complying the requirement.

112. In the case on hand, seizure was from a vehicle at 4

a.m. between sunset and sunrise, but warrant or authorisation was not found obtained from the Court prior to the conduct of the search of the vehicle. Grounds of belief was also found not recorded before conducting the search and seizure of the contraband from the vehicle.

113. Under the above provisions an officer empowered if have knowledge personally or from any other source regarding commission of offence or concealment of evidence or prohibited substance in a building, enclosed place or vehicle, he must reduce his knowledge or information into writing and forward the same to his immediate official superior.

114. In the case on hand, there was no personal knowledge or information to PW7 from a definite source

regarding the commission of offence by any person or concealment of any article enumerated under the provision regarding transportation of the contraband in any particular conveyance. The District Police Chief had only some personal knowledge about drug trafficking within the limits of Kattappana

and nothing else. Accordingly, a team for combing duty was formed and deployed at the spot for patrolling. The officers were not conveyed in particular about the information obtained by him regarding transportation of a prohibited substance through Puliyanmala-Kattappana road on 20.08.2017 in the early hours of the day in vehicle bearing Registration No.KL 38 F 2777. While on patrol, the members of combing team had come across with the incident in question. Neither PWs 7, 9 or 10 can be said

to have any prior information or knowledge about the transportation of drugs by someone in a vehicle through Puliyanmala-Kattappana road. In the above circumstances the recovery of the contraband can only be taken as a chance recovery while checking of vehicles and Section 42 NDPS Act cannot be said to have been attracted.

115. When they have no personal knowledge or

information from any source, the requirement of reduction of the information into writing as envisaged under Section 42(1) will not arise. Ext.P62 is only a brief narrative by the District Police Chief that a team of officers has been deployed to the place for checking commission of offences coming within the purview of the NDPS Act. Therefore, Ext.P62 is not an information reduced into writing by PW7 as canvassed by Sri.Asif Ali, the learned counsel. Without any prior information about the transportation of Hashish Oil by the accused in question in a car, the seizure in the case on hand was effected. It was only a chance recovery. Therefore, compliance of section 42 of the NDPS Act is not warranted.

116. Sri.Ralph, the learned counsel for the accused No.1 urged that the sample sent for chemical analysis was not the same as the one seized from the vehicle. According to him, contraband was described in Ext.P1, the contemporaneous

document prepared from the spot as a black oily substance. But the sample at the time when it was received at the Chemical Examiners Laboratory was reported by the Chemical Examiner as a dark green oily substance. Therefore, this Court also finds force in the argument of the learned counsel that the sample examined at the Chemical Examiners Laboratory and with reference to the examination of which, Ext.P59 certificate was obtained therefrom cannot be said to be one drawn from the contraband allegedly seized by PW7. Such being the context, there was every possibility to discern that tampering had taken place, Therefore, the certificate of analysis, marked in evidence as Ext.P59 ought not to have been relied on by the trial court to hold that the contraband recovered from the vehicle was Hashish oil. Ext.P59 was relied on by the trial court without applying its mind to the above aspect. In the above context, the inference that could only be possibly drawn was that the sample of the contraband allegedly drawn from the contraband seized from the vehicle was not sent for analysis and the Ext.P59 certificate is totally one irrelevant for the case in question.

117. The learned counsel has also argued in particular by drawing attention to the list of property marked in evidence that the quantum of the contraband was stated distinctly.

118. The Apex Court has held in *Vijay Pandey Vs. State of Uttar Pradesh* [AIR 2019 SC 3569]

The Failure of the prosecution in the case to relate the seized sample with the one from the one seized from the appellant makes the case no different from failure to produce the seized sample itself.

119. The specific defence taken by the accused in the case

was that their arrest was not from the spot of seizure as alleged by the prosecution, but from their own house on a date succeeding to the alleged date of seizure. According to them, the call details and the tower location were sought to be procured for consideration.

120. Originally the allegation was confined to possession of contraband by four persons who occupied the car at the time of seizure of the contraband. Accordingly crime was registered only for an offence under Section 21(c) NDPS Act. Later on based on the confession statement recorded from the accused, involvement of other accused were revealed. That was investigated by DYSP Crime Branch, Idukki and by Ext.P56 report filed before the trial court, offences under Sections 27A

and 29 were added into the crime. On completion of investigation, chargesheet was filed alleging commission of offences punishable under Sections 21(c), 27A and 29 NDPS Act.

121. Charge was framed by the court for the above

offences and the accused faced trial for those. All accused except accused Nos.1 to 4 were acquitted. Accused Nos.1 to 4 were also acquitted for the offence under sections 27A and 29 of the NDPS Act. As per the allegations of the prosecution, a conspiracy was hatched among the accused and pursuant to that Hashish oil was manufactured and transported by accused 1 to 4 on the fateful day in the car with a view to sell it. Therefore, the genesis of the case was the conspiracy, but the prosecution thoroughly failed to establish the same when the substratum upon which the case of the prosecution is built is lost, the case itself is lost.

122. Sri.Ralph, during the course of argument also invited this Court to the a delay of 45 days occurred for production of the properties seized, before the Court. The Investigating Officer while being examined as PW1, deposed that the delay

was occurred on account of rectification of some clerical mistakes crept into. The delay is required to be explained by the investigating officer, cogently and reasonably. Delay in the case on hand is not minimal, and the explanation offered was consumption of time in rectification of clerical mistakes. What are the mistakes happened to be rectified in a long span of 45 days was not spoken by PW7, which he is bound to state in a believable and justifiable manner. When the delay stands not explained cogently and reasonably, prosecution case can only be viewed with suspicion.

123. PW7 has stated during examination that the seizure

mahazar was prepared corresponding to the performance of the legal requirements relating to the search of the vehicle, the seizure of the contraband and the arrest of the accused.

124. Scene Mahazar was prepared during the course of

investigation and marked in evidence as Ext.P1. As deposed by PW7, the vehicle was intercepted, searched, the contraband was seized and the accused were arrested from a place 35 metres eastwards from Edassery Resorts. But the scene of occurrence was described in Ext.P1 as 35 km east west from Edassery Resorts. The four boundaries were also incorrectly described in

the scene mahazar. According to PW7 a report correcting the

errors was filed before the court later. According to PW7, forwarding note is prepared by him and submitted before the trial court. The document in effect is a requisition to forward the sample taken from the contraband at the court to the Chemical Examiners Laboratory for analysis and to obtain a certificate. Forwarding note is the only document to identify the sample, since it bears the impression of the sample seal affixed on the seized contraband from the spot.

125. When a contraband is recovered by the officials

authorised by NDPS Act from some place, the officer seizing it must affix his personal seal on it for ensuring authenticity to the seizure, safe custody of the contraband after seizure and its identity. In the case on hand being a Narcotic Substance, the officer seizing it must have to act in accordance with Section 52 NDPS Act. PW7 in the case on hand is found to have acted in compliance of Section 52 NDPS Act. The sealed packet containing the contraband was produced by him alongwith an inventory before Judicial First Class Magistrate Court but as discussed earlier, with a long delay of 45 days. The Magistrate concerned has caused the sealed packet to be opened in his

presence and verified it. On being convinced of the contents of the packet and having found the description in the inventory submitted by the officials tallying with the contraband produced, the Magistrate has certified its correctness. Sample was drawn from the contraband in the presence of the Magistrate and in the proceedings issued by the Magistrate marked in evidence, all formalities undertaken before the court has been described also. The sample was packed and sealed but the seal affixed on the contraband from the spot was omitted to be affixed on those. A

seal was affixed but that of Kattapana Police Station. For the forgoing discussions, the impugned judgment is liable to be reversed.

In the result, the appeals are allowed. The judgment

under challenge is reversed. Accused Nos.2 to 4 are acquitted for the offence under Section 21(c) NDPS Act. Bail bond of each of them stands cancelled and they are set at liberty.

Sd/- MARY JOSEPH, JUDGE. JJ APPENDIX OF CRL.A 99/2021 PETITIONERS ANNEXURES ANNEXURE A COPY OF THE ORDER IN CRL.M.C.NO.195/2018 IN SC (NDPS) NO.35/2018 OF THE COURT OF THE SPECIAL JUDGE FOR NDPS ACT CASES, THODUPUZHA DATED 27/12/2018. APPENDIX OF CRL.A 162/2021 PETITIONERS ANNEXURES ANNEXURE A1 CERTIFIED COPY OF THE JUDGMENT DATED 08.01.2021 IN S.C.(NDPS)NO.35/2018 OF THE COURT OF THE SPECIAL JUDGE FOR NDPS ACT CASES, THODUPUZHA.

ANNEXURE A2 TRUE COPY OF EXHIBIT P62. ANNEXURE A3 TRUE COPY OF REMAND APPLICATION DATED 20.08.2017. ANNEXURE A4 TRUE COPY OF THE SEIZED CONTRABAND UNDER SECTION 52A(2) OF NDPS ACT. ANNEXURE A5 TRUE COPY OF THE LIST OF PROPERTY DATED 20.08.2017. ANNEXURE A6 TRUE COPY OF EXHIBIT P1 MAHAZAR DATED 20.08.2017 (WITH TYPED COPY). ANNEXURE A7 TRUE COPY OF THE SITE PLAN DATED 11.7.2018. ANNEXURE A8 APPLICATION FILED BY INSPECTOR OF POLICE, KATTAPPANA TO THE SPECIAL COURT FOR NDPS CASES AT THODUPUZHA.

