

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Appeal No.1053 OF 2019

Between:

Srinivasula Varalaxmi

... Appellant

And

The State of Telangana, rep. by
its Public Prosecutor

... Respondent

Criminal Appeal No.1094 OF 2019

Between:

Pattani

... Appellant

And

The State of Telangana, rep. by
its Public Prosecutor

... Respondent

DATE OF JUDGMENT PRONOUNCED: 21.02.2025

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local
newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment
may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship
wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

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+Criminal Appeal No.1094 OF 2019

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its Public Prosecutor ...Respondent

! Counsel for the Petitioners: Sri P.Manoj Kumar for
Sri Duvvuri Subrahmanya Bhanu

^ Counsel for the Respondents: Sri M.Vivekananda Reddy,
Learned Asst. Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2016) 3 SCC 379

² AIR2023SC 5041

³ (2024) 5 SCC 393

⁴ Criminal Appeal No.250 of 2025, dated 06.01.2025

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.1053 and 1094 OF 2019****COMMON JUDGMENT:**

1. A1 was convicted for the offences under Section 23(c) r/w 28 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and A2 was convicted for the offences under Section 23(c) r/w 29(1) of the Act, vide judgment in S.C.No.21 of 2012 dated 26.09.2019 passed by the Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B.Nagar.

2. Criminal Appeal No.1053 of 2019 is filed by A2 and Criminal Appeal No.1094 of 2019 is filed by A1.

3. Both the appeals are heard together and disposed off by way of this Common Judgment.

4. Briefly, the case of the prosecution is that on 10.03.2012 at 8.00 p.m, P.W.1/A.Lakshmikanthan, Air Customs Superintendent, RGI Airport, Shamshabad received phone call on the landline of Air Customs of RGI Airport from anonymous person stating that two passengers, one of which is male person from Ramnad District of Tamilnadu and female passenger from Chittoor of AP were about to

board Thai Aircraft TG 330 to Bangkok, and that they were carrying narcotic drugs in the false bottom of their baggage and requested to take proper action. The said information was reduced into writing by P.W.1 and P.W.1 submitted the same to his immediate superiors, i.e., P.W.9 (Vinayak Bhat) Assistant Commissioner of Customs and also P.W.7 (G.Venkateswarlu), Superintendent, Customs (Preventive and Disposal), Hyderabad-II. P.W.1 secured the presence of independent witnesses P.W.8 (Abdul Muzeeb) and L.W.2(P.Pavani) and intercepted the two passengers, namely, Pattani (A1) and Srinivasula Varalaxmi (A2) who were bound for Bangkok by Flight No.TG 330 on 10.03.2012 from RGI Airport, Shamshabad. At the time of interception, A1 and A2 were proceeding to security check area after completing the check in, immigration and customs formalities for boarding Thai Airlines flight. A1 was holding Passport F 5066409 and A2 was holding passport F 5860103 and they figured at Serial Nos.113 and 138 of Passenger Manifest of Flight No.TG 330. The tickets were issued in their name by Akbar Travels of India Ltd., from Hyderabad to Bangkok and from Bangkok to Hat Yai and their return journey from Hat Yai to Bangkok on 19.03.2012 and from there to Hyderabad.

5. The officers P.W.1 and others, in the presence of P.W.8 and L.W.2, enquired A1 and A2 about their baggage details. A1 and A2 informed that they are in possession of one hand bag each and one checked in baggage. When A1 and A2 were questioned as to whether they were carrying any contraband, both replied in the negative but appeared to be extremely nervous and were sweating. As their answers were not satisfactory, the officers retrieved their checked in baggage from Thai Airlines and compared the same with checked in baggage tag details and found it to be tallying.

6. Thereafter, the officers, after completing the offloading formalities at the immigration, in the presence of P.W.8 and L.W.2, lead A1 and A2 along with their hand bags and checked in Baggage, to the Air Intelligence Unit Room located in the International Passenger Arrival Hall of RGI Airport. There P.Ws.1 and 3 introduced themselves as Gazetted Officers and P.W.3 informed in Tamil to A1 and A2 that their baggage would be examined and search of their person would be conducted under the provision of Section 50 of the Act. As per the said provision, the accused has a right to be searched, either before a Magistrate, or a Gazetted

Officer. A1 and A2 agreed for personal search by P.Ws.1 and 3. Thereafter, in the presence of P.W.8 and L.W.2, A1 and A2 opened and examined the hand bag of A1 which was in an unlocked condition. The bag was black in colour bearing the name Roshan and found that it contained personal articles, train journey tickets Indian currency amounting to Rs.210/- and a Nokia Mobile. Officers also examined the hand bag of A2 which was also in unlocked condition and black in colour with marking Ratnam Sugantha Pakkuthul in Tamil and found that it contained her personal articles, a Nokia mobile phone, few visiting cards apart from 760US dollars and Indian currency of Rs.370/-.

7. Then the officers in the presence of P.W.8, L.W.2, A1, and A2, examined the checked in baggage of A1 which Bag was in an unlocked condition. Bag contained used clothes, including some clothes of A2. After emptying the said bag, it was still heavy and thus, the officers closely examined the bag and found that the said bag had a false bottom. On carefully opening the false bottom of the said bag, it was found to be made of plywood planks covered with carbon paper and further covered with black colour cloth. On

removing the same officer found a black colour polythene bag with white coloured crystalline powder substance. On questioning by P.W.1 in Tamil as to the nature and name of the substance in the checked-in bag, A1 replied in Tamil that it was a Narcotic substance called Ketamine. On weighing the same, with the help of one electronic weighing scale available in the Air Intelligence Unit Room, it weighed 2.00 kgs. Thereafter A1 and A2 were searched personally, but no contraband goods were found. Thereafter, the officers have drawn two samples of 5 grams each of white coloured crystalline powder called as Ketamine and placed them in transparent polythene covers and further packed it in a white colour envelope wrapped with brown colour adhesive tape, and marked them as S1 and S2. Samples were sealed with the customs seal and also the remaining 1.990 kgs of the contraband in black colour was packed in a polythene bag. It was further wrapped in paper and placed in a card board box sealed with customs seal and also the test memos were prepared for the samples drawn.

8. Thereafter, the checked-in bag was seized, along with packing material used for concealment of the contraband, wrapped with

brown colour adhesive tape and sealed with customs seal. Officers seized the diary, documents, mobile phone and Indian currency recovered from the hand bag of A1 and placed them in a white coloured envelope and wrapped it with brown colour tape. Officers also seized the documents, mobile phone, Indian and foreign currency recovered from the had bag of A2 and placed them in a white coloured envelope and wrapped it with brown colour tape. The travel documents i.e., e-tickets, boarding cards for seat Nos.64E and 64F of flight No.TG 231 dated 11.03.2012, checked in baggage claim tags, were seized and the entire proceedings were recorded under a mahazar dated 11.03.2012.

9. Thereafter, summons were issued to A1 and his statement was recorded by P.W.7 under Section 67 of the Act. P.W.7 is a Tamil speaking officer. A1 stated that he had acquaintance with A2 and he went to Puthur on 08.03.2012 and met A2. He paid Rs.40,000/- to A2 to book tickets for Bangkok/Hat Yai for both of them and went back to Chennai and he met one Raja near Court at Mylapur. The said Raja gave him a Polo Classic bag concealed with Ketamine of 2 kg and 1500 Malasian ringetts and informed A1 to hand over

the bag to one Ismail Bhai. A1 proceeded to Pothur in train and waited for arrival of A2 and on her arrival, both A1 and A2 proceeded together to Kacheguda in train and reached there on 10.03.2012. They proceeded to Airport to catch Flight No.TG 330. As admitted, A1 had knowledge that the bag contained Ketamine of 2 kgs, which had to be handed over to Ismail Bai at HatYai and that A1 would be paid an additional amount of 2000 ringetts. Further, summons were issued to A2 and her statement was also recorded. Both A1 and A2 were arrested on 11.03.2012 under Section 42 of the Act by P.W.7 for illegal possession of Ketamine and produced before the Court and sent to judicial custody.

10. The seized Ketamine and the material objects were deposited with P.W.7, who is also in-charge of the Customs Seized Goods Godown, and P.W.1 submitted report in compliance of Section 57 of the Act. The samples drawn were forwarded to CRL, Customs House, Chennai for chemical analysis along with test memos containing the details of the material and facsimile seal through P.W.5. P.W.6 tested the samples and issued report that the sample powder answers the tests for the presence of Ketamine

Hydrochloride and upon collecting the FSL Report and on completion of investigation, complaint was filed before the Special Court.

11. Learned Sessions Judge framed charges against the appellants under Section 8(c) r/w Section 22, Section 8(c) r/w Section 23, Section 8(c) r/w Section 28, and Section 8(c) r/w Section 29 of the Act. Learned Sessions Judge examined P.Ws.1 to 11 and Exs.P1 to P28, and also MOs.1 to 6 were marked on behalf of the prosecution.

12. Learned Sessions Judge found that A1 and A2 travelled together and they boarded the flight at RGIA to go to Bangkok to deliver the bag which contained the contraband. The suit case MO1 was checked-in by A1 and 2 kgs of Ketamine was concealed in the bottom of the bag. The tickets Exs.P13 and P14 would indicate that A1 and A2 were flying to Hat Yai via Bangkok and their return tickets were also booked. Learned Sessions Judge further found that though no narcotic substance was found in the bag of A2, however, A1 and A2 were traveling together with the same PNR numbers and both tickets were booked with Akbar Travels at

Tirupati. A1 and A2 conspired to take contraband from India to Hat Yai through Bangkok.

13. Learned counsel appearing for A1 and A2 would submit that the agency has not followed the procedure under Section 52-A of the Act, for the said reason, the seizure is bad. The MO1 bag was not locked and there is every possibility of planting the contraband. The sample drawn was marked as S1 and there is no identification that the very same sample was received in the FSL for testing.

14. Learned counsel further argued that, P.W.2, who worked as Superintendent, Customs admitted that nothing could be found that A2 was having knowledge about the concealment of contraband in the bag of A1. He deposed in his cross-examination as follows:

“It is true that basing on the statement of A1 and A2 nothing could be found out that A2 was having knowledge about concealment of contraband in the baggage of A1.”

15. P.W.2 further admitted that he was not having any personal information regarding Ex.P7 report filed under Section 57 of the Act. P.W.6, who was the Chemical Examiner, in his cross-

examination, admitted that he has not conducted gas chromatography and HPLC and it is not possible to identify the purity of ketamine hydrochloride. P.W.6 further admitted that percentage of ketamine hydrochloride in the sample cannot be determined.

16. The main contention of A1 and A2 is that the procedure under Section 52-A of the Act was not followed. Learned counsel for A2 argued that A2's clothes which were allegedly found in the bag of A1, were not seized. Only for the reason of A1 and A2 traveling together, it cannot be said that the bag MO1 also belongs to A2.

17. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **Union of India (UOI) v. Mohanlal and others**¹, wherein it was held that not following the procedure under Section 52-A of the Act is fatal to the prosecution case. Learned counsel also relied on the judgment in the case of **Yousuf v. State**², wherein the Hon'ble Supreme Court held that the fact that samples were drawn in the presence of Gazetted Officer is not sufficient for compliance of mandate of Section 52-A of the Act. In **Mohammed**

¹ (2016) 3 SCC 379

² AIR2023SC 5041

Khalid and others v. The State of Telangana³, the Hon'ble Supreme Court held that confession recorded by a police officer is inadmissible in evidence.

18. Sri V.Ramakrishna Reddy, learned counsel appearing on behalf of the complainant/Superintendent of Customs, submits that the violation under Section 52-A of the Act cannot be considered by the Court unless specific defence is taken by the appellants during the course of trial. Once the appellants did not plead any prejudice on account of not following Section 52-A of the Act, the same cannot be made basis to reject the case of the prosecution. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **Bharat Aambale v. The State of Chattisgarh**⁴, wherein it is held as follows:

“50. We summarize our final conclusion as under: -

(I) Although [Section 52A](#) is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute

³ (2024) 5 SCC 393

⁴ Criminal Appeal No.250 of 2025, dated 06.01.2025

sufficient compliance of the mandate under [Section 52A](#) sub-section (2) of the [NDPS Act](#).

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in [Mohanlal](#) (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under [Section 52A](#) of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per [Section 52A](#) sub-section (4) of the [NDPS Act](#), irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of [Section 52A](#) of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under [Section 52A](#) or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of [Section 52A](#) of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid

down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

19. The Hon’ble Supreme Court in the latest judgment of **Bharat Aambale v. The State of Chattisgarh’s case**, held that the burden lies on the accused to lay foundational fact to assert that there was no compliance of Section 52-A of the Act, either by leading evidence on its own, or by relying on the evidence of prosecution. If there is other material which proves the prosecution case, the Court can convict, notwithstanding any procedural lapses in terms of Section 52-A of the Act. The Hon’ble Supreme Court further held that the Court should take a holistic and cumulative view of the

discrepancies that may exist in the evidence adduced by the prosecution, and mere non compliance of Section 52-A of the Act will not be fatal to the trial.

20. The contraband was seized at the Airport which was concealed in the bottom of the suit case. The bag which was checked-in by A1. Two samples of 5 grams each were drawn, placed in polythene cover and marked as S1 and S2. The remaining 1.99 kgs of contraband was separately sealed. S1 sample sealed cover, was then sent through P.W.5 to P.W.6. P.W.6 is the Chemical Examiner. In the Customs House, that is located at Chennai, P.W.6 received the cover marked as S1. He has given acknowledgment to P.W.5 under Ex.P9(a). P.W.6 stated that all the seals were intact and tallying with facsimile of the seals given in the test memo. He analysed samples and found positive for Ketamine hydrochloride. The argument of the learned counsel for the appellants that Section 52-A of the Act was not followed, cannot be considered at the stage of appeal, when no such defence was taken during trial. Following the judgment of the Hon'ble Supreme court in **Bharat Aambale's** case (supra), and considering the facts and circumstances, ground

raised by the counsel regarding violation of Section 52-A of the Act, is rejected.

21. The sequence of the events that transpired, and when the documents are considered, there leaves no room for doubt regarding the sample S1 being tested and the series of custody has been explained by the prosecution by supporting documents. There leaves no room for doubt regarding seizure and sampling of the contraband, to say that there is any violation of the procedures prescribed under the NDPS Act.

22. A2 was traveling with A1. She took tickets at Tirupathi to Kacheguda and from there, both A1 and A2 were to travel on the same flight and reserved with one PNR number to go to Hat Yai. The fact remains that the bag was checked in by A1. Though the used clothes of A2 were allegedly found in the bag of A1, the same were not seized by the officers at the time of panchanama. The contraband was concealed in the base of the suit case that was checked in by A1. Though A2 traveled with A1, it is not sufficient proof to accept that the prosecution proved that A2 had knowledge about the drug being concealed in the bottom of the suit case. No

evidence is produced by the prosecution or any investigation done as to where the concealment of the drug was done and whether A2 had knowledge about the drug. In the absence of any evidence to prove that the concealment of the drug in the suit case was in the presence of A2 or to her knowledge, the question of attributing knowledge to A2 about the concealment in the suit case of A1, does not arise.

23. The trial Court mainly relied on the fact that both A1 and A2 were traveling together and also on the statement made under Section 67 of the Act. The statement of an accused under Section 67 of the Act is inadmissible. Suspicion and/or assumption cannot form basis to find A2 guilty, when the complicity of A2 is not proved beyond reasonable doubt by the prosecution. Accordingly, benefit of doubt is extended to A2. However, conviction of A1 is confirmed.

24. In the result, the judgment of trial Court in S.C.No.21 of 2012 dated 26.09.2019, is set aside insofar as A2 is concerned, and confirmed with regard to A1. Since the Appellant/A2 is in jail, she is directed to be released forthwith, if she is not required in any other case.

24. Accordingly, Criminal Appeal No.1053 of 2019 is allowed and Criminal Appeal No.1094 of 2019 is dismissed.

K.SURENDER, J

Date: 21.02.2025
kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.1053 and 1094 of 2019

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