

that the mandate of Section 55 of the Act has not been@
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followed and as the Trial Court as well as the Appellate
Court arrived at the guilt of the appellant on wrong
assumptions, the appeal be accepted by setting aside the
impugned judgment.

In order to appreciate this submission some facts of the
case are required to be noticed. There is no dispute that
the truck, when intercepted, was not stationary but was in
transit being driven by the appellant. The raiding party
comprised of Nand Lal Rai, Inspector (PW8), Mohan Lal (PW1),
Bajrang Lal (PW2) and Zaheen Ahmad (PW7). Suspecting that
in the truck some narcotic drugs might be transported,
Inspector Nand Lal Rai (PW8) called independent witnesses
Onkar and Ram Lal and in their presence told the appellant
that he had a suspicion of opium being transported in the
truck. As he wanted to take search of the truck, he
inquired from the appellant whether he would get the truck
searched in the presence of a Gazetted Officer or a
Magistrate. He was told by the accused that the truck may
be searched by any officer or employee. As by that time
rain had started and there was no arrangement of light at
the place of checking, the preventive party took the truck
along with its driver to the Control Room of Central
Narcotics Bureau, Kota. PW8, Nand Lal Rai along with other
employees searched the truck in the presence of Anand Singh
Negi and other witnesses and found three gunny bags
containing opium, as noticed earlier. From each of the
gunny bags 2-2 samples of 24-24 grams opium was taken for
chemical examination and the samples seized in the presence
of the witnesses. The raxine bags containing opium were
placed in the gunny bags in the condition as it were and
each of the gunny bags was wrapped in white cloth and
sealed. Nand Lal Rai, Inspector(PW8), Anand Singh Negi
(PW4) and other employee-witnesses of the Department put
their signatures on the samples and the three bundles. They
also signed the Panchanama. The appellant was arrested
under the Act. Inspector Nand Lal Rai then went to the
office of the Superintendent, Central Narcotic Bureau, Kota
and lodged the First Information Report. The
Superintendent, Central Narcotic Bureau, Kota handed over
the investigation to Inspector Shiv Narain. The information
of the incident was sent to the higher authorities on 23rd
August, 1992. Samples taken from the seized opium were sent
to the General Manager, Government Opium and Alkaloid Works,
Neemach. On examination, the samples were found to be of
opium.

In the trial Court, the defence counsel argued that the
provisions of Section 42, 50, 52A, 52(1)&(2), 55 and 57 had
not been complied with. The Court, however, held that the
provisions of Section 42 of the Act were not applicable and
under Section 49, which was the relevant Section for the
case, it was not necessary for Inspector Nand Lal Rai (PW8)
to reduce in writing, the reason for suspicion before taking
the actual search. The alleged violation of Section 52A of
the Act did not affect the merits of the case. No prejudice
was held to have been caused on account of alleged
non-compliance of the provisions of Section 52(1)&(2) of the
Act. Section 52(3) of the Act was held to have been
complied with. So far as compliance of Section 55 of the
Act was concerned, the Trial Court held:

"On the basis of above discussion of evidence, I am of

evidence or the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset, enter into any such building, conveyance or place and in case of resistance, break open any door and remove any obstacle to such entry. Such officer has the power to seize the drug or substance and all material used in manufacture thereof and any other article or conveyance which he has reason to believe to be liable to confiscation under the Act and detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV. If such officer has reason to believe that such warrant and authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for escape of an offender, he has the authority to enter such building, conveyance or enclosed place any time between sunset and sunrise but after recording the grounds of his belief. For attracting the applicability of Section 42, it is necessary that the officer empowered thereunder, before exercise of his right, has reason to believe from personal knowledge or information regarding the movement of narcotic drug or psychotropic substance. However, if the action is taken not upon his personal knowledge or information, the requirements of Section 42 would not be applicable. Section 43 of the Act provides:

"Power of Seizure and arrest in public places.-- Any officer of any of the departments mentioned in section 42 may--

(a) seize, in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter IV relating to such drug or substance.

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter IV, and, if such person has any narcotic drug or psychotropic substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation--For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop or other place intended for use by, or accessible to, the public."

Section 49 of the Act provides:

"Power to stop and search conveyance --Any officer authorised under Section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance, in respect of which he suspects that any provisions of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and--

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon."

Section 53 of the Act empowers the Central Government, after consultation with the State Government to invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or Border Security Force or any other class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under the Act. The provisions of the Code of Criminal Procedure, 1973 have been made applicable in so far as they are not inconsistent with the provisions of the Act to all warrants issued and arrests, searches and seizure under the Act. Section 52 of the Act requires an officer arresting a person under Sections 41, 42, 43 or 44, as soon as may be, to inform him of the grounds for such arrest. Every person arrested and articles seized under warrant issued under sub-section (1) of Section 41 is required to be forwarded without necessary delay to Magistrate by whom the warrant was issued. Sub-section (3) of Section 52 provides:

"(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."

Section 55 mandates an officer in-charge of a police station to take charge and keep in safe custody of articles seized under the Act within the local area of that police station which may be delivered to him (Emphasis supplied) and shall allow any officer who may accompany such article to the police station or who may be deputed for the purpose to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Relying upon this Section Mr. Jayant Bhushan, learned amicus curiae, submitted that as after the seizure the goods were sent to the Superintendent, Central Narcotic Bureau, Kota, who, as per law, being in-charge of a police station, had not affixed his seal on the articles and the samples, the whole of the procedure followed being illegal, entitled the appellant to be acquitted. The argument, though attractive on the face of it, when analysed in depth, is found to be without any substance. With the application of Section 51 read with Sections 52 and 53 of the Act, the officer required to affix the seal etc., under Section 55 of the Act, would be "the officer in-charge of the nearest police station" as distinguishable from an officer in-charge of a police station empowered under Section 53 of the Act. If resort is had to the procedure prescribed under sub-section 3(a) of Section 52, the applicability of Section 55 of the Act would be attracted but if the arrested person and the seized articles are forwarded under Clause (b) of

sub-section (3) of Section 52 of the Act to the officer empowered under Section 53 of the Act, the compliance of Section 55 cannot be insisted upon. The distinction between the officer incharge of the nearest police station and the officer empowered under Section 53 of the Act is distinct and clear. The distinction is apparently based upon a reasonable object, because as in case the person and the seized articles are referred to the 'officer incharge of the nearest police station', a distinct agency, than the 'officers contemplated under Section 53' of the Act, comes into the picture which requires the taking of sufficient safeguards to protect the seized property in the interests of the arrested persons. The distinction is also evident from Section 52A(2) of the Act. Keeping in view the multifarious activities and the duties cast upon the officer incharge of the police station under the Code of Criminal Procedure and he being apparently busy with the duties under the Code, the officers mentioned in Section 53 of the Act have been mandated to take action for disposal of seized narcotic drugs and psychotropic substances by filing application which, when filed, has to be allowed by the Magistrate as soon as may be. We are of the opinion that in the present case the procedure prescribed under Section 49 read with Section 43 was attracted, which, on facts, has been found to be followed. Keeping in mind the facts and circumstances of the case and the mandate of law, as explained by this Court in Abdul Rashid Ibrahim Mansuri's case (supra), we are of the opinion that the appellant had not discharged the burden of proof in any manner to rebut the presumption envisaged under Section 35 of the Act. He has been proved to be transporting the opium with a conscious mind and full knowledge. All ingredients of the offences with which he has been convicted and sentenced had been proved by the prosecution.

We find no merit in this appeal which is accordingly dismissed.