



2025:KER:84663

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 7TH DAY OF NOVEMBER 2025 / 16TH KARTHIKA, 1947CRL.A NO. 1218 OF 2015

AGAINST THE JUDGMENT DATED 23.09.2015 IN SC NO.641 OF 2011 OF

ADDITIONAL SESSIONS COURT - VIII, ERNAKULAM

CRIME NO.2151/2011 OF PALLURUTHY POLICE STATION, ERNAKULAM

APPELLANT/ACCUSED:

ANEESH
AGED 27 YEARS, S/O. NASSAR,
GALASSETTU PARAMBIL, CC 5/502,
MATTANCHERY, ERNAKULAM.

BY ADVS.
SRI.P.MOHAMED SABAH
SRI.LIBIN STANLEY
SMT.SAIPOOJA
SRI.SADIK ISMAYIL
SMT.R.GAYATHRI
SRI.M.MAHIN HAMZA
SHRI.ALWIN JOSEPH
SHRI.BENSON AMBROSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY STATION HOUSE OFFICER,
PALLURUTHY POLICE STATION,
THROUGH GOVERNMENT PLEADER,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.

SMT. SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.10.2025, THE
COURT ON 07.11.2025 DELIVERED THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****Crl.Appeal No. 1218 of 2015**

Dated this the 7th day of November, 2025

JUDGMENT

Appellant assails the verdict of guilty apart from the consequent conviction and sentence imposed upon him under section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). By the impugned judgment, appellant has been sentenced to undergo rigorous imprisonment for a period of thirteen years and to pay a fine of Rs.1,00,000/-, with a default sentence.

2. The prosecution alleged that on 21.10.2011, the accused was found in possession of 174 ampules of Lupigesic and 24 unlabelled ampules. Prosecution further alleged that each ampule contained 2 millilitres (ml) of contraband and 12 of the ampules were found in the pocket of the pants of the accused, apart from Rs.200/- found in his shirt pocket and thereby the accused committed the offences alleged.

3. The prosecution case was attempted to be proved through PW1 to PW6, apart from Exhibit P1 to Exhibit P20 and material objects MO1 to MO5, while the defence tried to justify the claim of innocence of the accused and marked Exhibit D1. However, after analysing the evidence adduced in the case,



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the Trial Court found the accused guilty and sentenced him as mentioned earlier.

4. Smt. Saipooja, the learned counsel for the petitioner contended inter alia that the production of contraband before the Court was delayed by around seven days, thereby creating doubts on the veracity of the prosecution case. The learned counsel also pointed out that the requirements under section 52A of the NDPS Act had not been complied with and the accused could not have been convicted since the sample was not taken in the presence of the Magistrate as required by section 52A of the Act and as held in the decision in **Noor Aga v. State of Punjab and Another** [(2008) 16 SCC 417] and **Nadeem Ahamed v. State of West Bengal** [2025 INSC 993]. The learned Counsel further submitted that there was no compliance of section 50 of the NDPS Act as it was compulsory to make an endeavour to take the accused to a Magistrate as held in **Ranjan Kumar Chadha vs. State of Himachal Pradesh** [AIR 2023 SC 5164]. The learned Counsel also contended that Exhibit P1 and Exhibit P13 reports filed under section 42 and section 57 of the NDPS Act respectively, were not in accordance with law. In order to buttress her submissions that the prosecution was totally flawed, the learned counsel relied upon the absence of any independent witnesses in Exhibit P2 consent statement of the accused, absence of any independent local witnesses and the presence of two papers with the signatures of the accused and witnesses, all of which, according to her create doubts on the prosecution case itself. The learned counsel also pointed out that as per the deposition of PW2-the Village



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Officer, the width of the road was so narrow that a container lorry could not have been parked there. The learned counsel further submitted that the NDPS Act indicates quantity of contraband on the basis of grams while the prosecution case dealt with millilitres and in the absence of any evidence regarding quantum of alleged contraband after converting it into grams or even any reference in the court charge to the equivalent grams of contraband, the charge by itself is faulty and the accused cannot be found guilty, that too, for the offence of possessing commercial quantity of the contraband. It was further submitted that the two independent witnesses examined by the prosecution as PW4 and PW5, had turned hostile and there was no attempt to identify any of the signatures in the records. It was submitted that the evidence adduced by the prosecution being full of inconsistencies and incongruities, their case is unbelievable.

5. Smt. V. Sreeja, the learned Public Prosecutor on the other hand contended that the accused was found in possession of 174 ampules of Lupigesic carried by him in a plastic kit, apart from another 12 ampules of the same drug recovered from the pocket of his pants, each containing 2 millilitres and that every procedure required by law has been complied with. It was submitted that Exhibit P1 is the document that satisfies the compliance of section 42 of the NDPS Act, while Exhibit P13 is the document that depicts compliance of section 57 of the NDPS Act. The learned Prosecutor submitted that section 50 of the NDPS Act also stands satisfied in the instant case and that it was not compulsory that the accused should be taken to the Magistrate.



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It was further submitted that Section 52A has no application in the instant case since what was produced and marked in the trial court was not a representative sample but the entire quantum of drugs seized from the possession of the appellant. The learned Public Prosecutor further submitted that there is no delay in producing the documents before the Court and further that the width of the road as deposed to by PW2 was clarified by the Investigating Officer when examined as PW6 and considering the nature of evidence adduced, there is no reason to disbelieve the prosecution case. The learned Public Prosecutor also submitted that the seized contraband was produced before the Magistrate's court without any delay.

6. On an appreciation of the rival contentions, the following issues arise for consideration;

1. Whether the requirements under sections 42 and 57 of the NDPS Act have been satisfied or not?
2. Whether the requirements under section 50 of the NDPS Act have been complied with?
3. Whether section 52A of the NDPS Act is required to be complied with, in the instant case?
4. Whether the reference to millilitres in the quantum of contraband seized and the charge framed has affected the prosecution case?
5. Whether there was any delay in production of the contraband before the Court?
6. Whether the prosecution case is doubtful or not and whether the impugned judgment needs any interference?

Issue No. 1: Whether the requirements under sections 42 and 57 of the



NDPS Act have been satisfied or not?

7. The prosecution case was built on the allegation that on 21-10-2011 at around 4.30 pm, an anonymous information was received regarding a person indulging in sale of drugs near Aquinas College. The said information was taken down in writing and a copy thereof was sent to the Circle Inspector, Palluruthy. Exhibit P1 is the information communicated to the immediate official superior, dated 21-10-2011 and is endorsed as received on the same date itself. Further, the said document contains the seal of the Magistrate's Court with the date "22 Oct 2011". Exhibit P13 is the report of arrest and seizure as required under section 57 of the NDPS Act. The said report is also seen received by the immediate official superior. However the date of receipt as endorsed by the said superior officer has created some confusion, as it can be read either as "27-10-2011" as well as "21-10-2011", but more as the former. Though the learned Counsel argued that the date can only be read as 27-10-2011, it can be seen from the endorsement on the document that it was received by the Magistrate's Court on 22-10-2011. Further, PW6 had, in his deposition, deposed that he writes the numeric '1' in that manner. No doubts were raised by the defence to that answer during the evidence stage and the said statement remains unchallenged. Hence it has to be concluded that both Exhibit P1 and Exhibit P13 were received by the superior officer on 21-11-2010.

8. Law requires compliance of Section 42 of the NDPS Act as mandatory. Non compliance will vitiate the trial. The first step under Section 42 of the



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NDPS Act starts with the information received by the empowered officer, about the commission of an offence under the NDPS Act, and recording the information or the grounds of belief, as the case may be, in writing. The second step is to send a copy of the recorded information or grounds of belief to his immediate official superior within seventy two hours. Section 57 of the NDPS Act requires the arrest or seizure to be reported to the immediate official superior within forty eight hours. On an appreciation of the oral and documentary evidence mentioned earlier, it is evident that Exhibit P1 and Exhibit P13 were received by the immediate official superior on the same day itself and within the time limits prescribed by law. Thus, the requirements under sections 42 and 57 of the NDPS Act have been satisfied in the instant case.

Issue No. 2. Whether the requirements under section 50 of the NDPS Act have been complied with?

9. Section 50 of the Act requires that when a person is to be searched under the provisions of the NDPS Act, he should be made aware of his right to be searched in the presence of a Gazetted Officer or a Magistrate. However, the provision has application only in cases of personal search of a person and does not extend to the search of a vehicle or a container or a bag or even premises. Further, section 50 of the NDPS Act has no application in cases where the recovery of the contraband is made from a bag or a container carried by the suspect, as it has been held that those articles do not come within the sweep of the word "person" in the said provision. Needless to



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mention that the provisions of section 50 of the NDPS Act will come into play only in the case of personal search of the accused and not of anything which the accused may be carrying in his hands. Reference to the decisions in **State of Punjab v. Baldev Singh** [(1999) 6 SCC 172], **Jarnail Singh v. State of Punjab** [AIR 2011 SC 964], **Than Kunwar v. State of Haryana** [(2020) 5 SCC 260] and **Ranjan Kumar Chadha v. State of Himachal Pradesh** [AIR 2023 SC 5164] are relevant in this context.

10. In Exhibit P13 report, it is mentioned that when PW1 reached the place where the accused was standing, he found a white plastic kit in his hands. Immediately on seeing the police party, the accused tried to hide behind a container lorry parked on the side of the road. Thereafter, the accused was restrained and when questioned regarding the contents of the kit in his hands, he initially informed that he was carrying certain food items and when demanded it to be opened, it was found to contain another kit, which, when inspected, was found to contain ampules of Lupigesic.

11. The accused was then informed that the search of his body was required to be carried out, for which he had the right to have it conducted in the presence of a Gazetted Officer or a Magistrate. The report also mentions that the accused insisted on being searched in the presence of a Gazetted Officer and hence the Excise Circle Inspector, Kochi was attempted to be contacted but since the said Officer was on leave, the Circle Inspector of Fort Kochi was contacted and he reached the place by 5:20 pm. After ensuring that the police officers present at the scene did not have any contraband in their



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possession, the accused was searched, which revealed that he possessed 12 ampules of Lupigesic inside the pocket of his pants and Rs.200/- as cash. PW1 and PW6 have given evidence to the above effect as well and Exhibit P2 is the written consent statement of the accused agreeing to be searched.

12. Section 50 of the NDPS Act imposes an obligation on the Police Officer to inform the suspect of his right to have his search conducted either in the presence of a Gazetted Officer or a Magistrate. The mandate under the provision depends upon the decision of the suspect. If the suspect declines his right to be searched in the presence of either of the two persons mentioned in the provision, the empowered officer can proceed to conduct the search of the person himself. In the decision in **Vijaysinh Chandubha Jadeja v. State of Gujarat** [AIR 2011 SC 77], it has been held that the obligation of the authorised Officer under section 50(1) of the Act is mandatory and requires strict compliance. It was also observed that failure to comply with the provision would render the recovery of the illicit article doubtful and even vitiate conviction.

13. As mentioned earlier, the learned counsel for the appellant contended that the no endeavour was made by the Detecting Officer to take him to a Magistrate which was a mandatory requirement under section 50 of the NDPS Act as held in **Ranjan Kumar Chadha v. State of Himachal Pradesh** [AIR 2023 SC 5164]. The argument, though compelling initially, a deeper analysis reveals it as legally untenable. In **Ranjan Kumar Chadha** (supra) the Supreme Court had laid down ten propositions relating to the procedure under



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section 50 of the Act. As those propositions lucidly explains the ambit of the provision, it is reproduced as follows:

"66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows: -

- (i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.*
- (ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.*
- (iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.*
- (iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.*
- (v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.*
- (vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.*
- (vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no*



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application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings. (emphasis supplied)."

14. The obligation of the empowered officer to inform the suspect of his right to be searched in the presence of the nearest Gazetted Officer or a Magistrate is a mandatory condition. As held in para 66(vi) of the above judgment, once the right is exercised, the choice whether to take the suspect to a Gazetted Officer or to a Magistrate is that of the empowered officer and not that of the suspect or the accused. Though, it would be ideal to take the suspect to a Magistrate and endeavour should also be made to take him before the nearest Magistrate, such an ideal requirement cannot be elevated to the status of a mandatory requirement. The contention to the contrary cannot be accepted.

15. It is trite that a judgment cannot be read like a statute and the words



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or observations in a judgment should not be read in isolation. The decisions in **P. S. Sathappan v. Andhra Bank Ltd. and Others** [(2004) 11 SCC 672] and that in **Goan Real Estate and Construction Limited and Another v. Union of India and Others** [(2010) 5 SCC 388] are relevant in this context. Thus, though the obligation of the empowered Officer under section 50(1) of the Act to inform the suspect of his right to be searched is mandatory, the requirement to, endeavour to take him to a nearest Magistrate, cannot be regarded as a mandatory requirement. Hence, in the instant case, the requirements of section 50 of the NDPS Act have been complied with.

Issue No. 3. Whether section 52A of the NDPS Act is required to be complied with, in the instant case?

16. On a perusal of the nature of evidence adduced and also the material objects produced, it is evident that the entire quantum of contraband seized was produced before the Court and has even been marked in evidence. Section 52A of the NDPS Act deals with disposal of seized narcotic drugs and psychotropic substances. The contention raised by the learned counsel for the appellant, relying upon the decisions in **Noor Aga v. State of Punjab and Another** [(2008) 16 SCC 417] and **Nadeem Ahamed v. State of West Bengal** [2025 INSC 993] was that when the procedure under section 52A has not been complied with, the sampling becomes flawed and the case of the prosecution has to fail.

17. The aforesaid contention of the learned counsel is misplaced. First and foremost, section 52A of the NDPS Act has not been considered to be



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mandatory, as observed in **Nadeem Ahammed's** case (supra) itself. The irregularity in sampling for failure to comply with section 52A of the NDPS Act cannot automatically result in vitiating the entire procedure adopted by the prosecution or treat the evidence of the prosecution to be unworthy of credence. Further, as held in **Kashif** (supra), any lapse or delay in complying with section 52A of the Act by itself will not vitiate the trial.

18. Secondly, the scope and ambit of section 52A of the NDPS Act arises in cases where the contraband seized is disposed of by destruction or otherwise or when a representative sample alone is produced before the Court during trial. In the decision in **Narcotic Control Bureau v. Kashif** [(2024) 11 SCC 372], it was observed that the purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. It was also held that sub-section (2) of section 52A lays down the procedure for the purpose contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would merely be a procedural irregularity which would not vitiate the trial on that ground alone.

19. Similarly, in the decision in **Bharat Aambale v. State of Chhattisgarh** [(2025) 8 SCC 452] it has been held, after considering all the decisions on the issue, that, although Section 52A of the Act is primarily for the disposal and destruction of seized contraband in a safe manner, yet, it extends



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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. It was also observed that any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act would have to be mandatorily treated as primary evidence irrespective of whether the substance in original is actually produced before the court or not. Further, the court held that mere non-compliance of the procedure under section 52A will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution case doubtful, which may not have been there had such compliance been done.

20. Thus, the requirement to comply with section 52A of the NDPS Act will arise when the contraband seized is not produced in its entirety before the Court and instead only a representative sample was produced. When a representative sample alone is produced and marked in evidence, and the procedure prescribed under section 52A of the NDPS Act had been complied with, then the representative sample would be reflective of the entire lot and the same would be treated as the primary evidence. The above proposition can be explained through an illustration as follows. Imagine a case where a commercial quantity of a contraband is seized from an accused. Normally the



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entire quantity of contraband seized must be produced to justify the prosecution case that the accused was found in possession of a commercial quantity of the contraband. However, if the contraband is required to be destroyed or cannot be stored or is unable to be produced in its entirety, a representative sample can be taken as prescribed under section 52A of the NDPS Act. If such a sample is taken, then the said representative sample shall by law be treated as the primary evidence of the entire quantity and nature of contraband seized.

21. In the light of the above mentioned principles and taking note of the fact that the entire contraband seized was produced during evidence, this Court is of the view that the question of compliance or non-compliance of section 52A of the NDPS Act does not arise in the instant case.

Issue No.4. Whether the reference to millilitres in the quantum of contraband seized and the charge framed has affected the prosecution case?

22. The contraband seized from the possession of the appellant was 174 ampules of Lupigesic and 24 unlabelled ampules. Each ampule contained 2 millilitres of the said contraband. The NDPS Act specifies the commercial quantities in grams or kilograms and not in millilitres or litres. The appellant argued that the quantum of contraband seized was specified in millilitres and not in grams and hence there was nothing to prove that the contraband seized falls within the commercial category as spelt out in the statute. The said contention though appealing *prima facie*, it falters on a closer appreciation of the evidence. The narcotic drug contained in the contraband seized is



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Buprenorphine and is scheduled in the Table of NDPS Act as serial No.169. Commercial quantity of Buprenorphine as per the Table is 20 grams. Exhibit P20 chemical analysis report specifically mentions that the strength of Buprenorphine per one millilitre is equivalent to 0.299 mg. Hence the quantum of 194 ampules seized from the appellant contained a total strength of 116 grams of Buprenorphine and falls in the commercial category. Since the conversion is mentioned in the chemical analysis report, reference to millilitres in the quantum of contraband seized and the charge framed has not affected the prosecution case.

Issue No.5. Whether there was any delay in production of the contraband before the Court?

23. Exhibit P18 is the remand report and it contains the remand order dated 22-10-2011 written by the learned Magistrate. The remand order refers to the accused alone as having been produced before the Magistrate. There is no mention of the contraband having been produced along with the accused. Exhibit P14 is the property list dated 22-11-2011, which contains the seal of the Sessions Court with the date 28-11-2011. Though there is an endorsement in green ink with the date 22-10-2011, there is nothing to indicate that the said sign belongs to the Magistrate or that the contraband was produced before the Magistrate at any time. The property (thondi) number is seen allotted on 27-10-2011. The forwarding letter Exhibit P19 is dated 28-10-2011. The documentary evidence adduced do not disclose as to who was in custody of the contraband from the date of seizure till 28-10-2011. The depositions of the



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witnesses do not shed any light on this aspect. No attempt was made to identify the signature in the green ink with the date 22-10-2011 on Exhibit P14. The said signature does not have any similarity with the signature of the Magistrate on the remand order. Thus, it has to be concluded that the contraband seized on 21-10-2011 reached the Court only on 28-11-2011 or at least on 27-10-2011. No attempt was even made to explain the reason for the delay or even the mode and manner in which the contraband was kept in custody. Hence it has to be held that there was an unexplained delay in producing the seized contraband before the Court.

Issue No. 6. Whether the prosecution case is doubtful or not and whether the impugned judgment needs any interference?

24. In the decision in **State of Uttar Pradesh v. Hansraj alias Hansu** [(2018) 18 SCC 355], the Supreme Court was considering a case where the contraband seized was sealed and deposited in the police station and later produced before the Court. There was no evidence as to how and at what time and date the samples were taken for analysis. The High Court acquitted the accused after coming to the conclusion that there was no evidence to show as to how and in what condition the articles were preserved at the police station and how safely they were taken from there to the respective chemical examiners. The Supreme Court refused to interfere and held that there was no perversity to interfere with the said conclusion.

25. Similarly, in **Faijas v. State of Kerala** [2020 Cri.L.J 4758] a learned single Judge of this Court considered a case where the seizure was on



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15.11.2011 while the property list showed its production before the court only on 19-11-2011. This Court came to the conclusion that the prosecution had failed to explain the reason for the delay in producing the contraband. In the decision in **Renjith v. State of Kerala** [2024 KER 76032], it was held that when there is inordinate delay in producing the contraband before the Court, without proper explanation for the delay, and when no evidence is adduced to show who was keeping the contraband till such time, and under what conditions, it is a strong circumstance to doubt the genuineness of the sample and the credibility of the prosecution case.

26. On an appreciation of the above principles it can be discerned that if there is delay in production of the contraband before the Court, in the absence of a reasonable explanation from the side of the prosecution, the credibility of the prosecution case will be affected. The accused will, in such circumstances, be entitled to the benefit of doubt. In this context, it is relevant to note that the seizure mahazar does not contain the specimen seal, which is yet another factor that leans in favour of the accused. As there is no evidence forthcoming regarding the person in whose custody the contraband was kept, the conditions under which it was kept in the police station or elsewhere, the unexplained delay in producing the contraband before the Court coupled with the absence of the specimen seal on Exhibit P11 seizure mahazar, the integrity of the prosecution case becomes doubtful. The cumulative effect of the above factors persuade this Court to give the benefit of doubt to the appellant and the impugned judgment is liable to be interfered with and the accused has to be



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acquitted.

In the result, the conviction and sentence imposed upon the appellant in S.C. No.641 of 2011 on the files of the Additional Sessions Court-VIII, Ernakulam, is hereby set aside and the appellant is acquitted. The fine amount if any, deposited by the appellant, shall be refunded to him.

This appeal is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

/True Copy/

PS to Judge