



*Crl.A.Nos.207 & 225
of 2017*

In the High Court of Judicature at Madras

Reserved on : 29.3.2023	Delivered on : 03.4.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Appeal Nos.207 and 225 of 2017
Crl.M.P.Nos.5018 and 5439 of 2017

Mohammed Razik Jawzeek

...A2/Appellant in
Crl.A.No.207/2017

Mayilerum Perumal

...A1/Appellant in
Crl.A.No.225/2017

Vs

State rep.by the Assistant
Commissioner of Police,
T-12, Poonamallee Police
Station, Thiruvallur District.

...Respondent in
Crl.A.No.207/2017

State rep.by the Inspector
of Police, T-12, Poonamallee
Police Station, Thiruvallur District.

...Respondent in
Crl.A.No.225/2017

APPEALS under Section 374(2) of the Criminal Procedure Code
against the judgment dated 27.1.2017 made in C.C.No.1 of 2015 on
the file of the Principal Special Court under the EC & NDPS Act,
Chennai-104.



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For Appellant in
Crl.A.No.207 of 2017: Mr.A.Suresh Selvakumar

For Appellant in
Crl.A.No.225 of 2017: Mr.G.Murugendran

For respective Respondent
in both the Appeals : Mr.L.Baskaran,
Government Advocate (Crl.Side)

COMMON JUDGMENT

These criminal appeals have been filed by A1 and A2 against the judgment and order passed by the learned Principal Special Judge, Special Court constituted under the EC & NDPS Act, Chennai-104 in C.C.No.1 of 2015, dated 27.1.2017, convicting the appellants for the offences under Section 8(c) read with Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the Act) and sentencing each of them to undergo ten years rigorous imprisonment and to pay a fine of Rs.1 lakh each and in default, to undergo six months rigorous imprisonment.

2. The case of the prosecution is briefly stated as hereunder :

(i) P.W.1 - the Inspector of Police, T-12 Poonamallee Police Station received a secret information on 18.10.2014 at about 9 AM to



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the effect that heroine powder had been concealed at No.74, Malliam Narasimman Nagar, Poonamallee. This information was recorded in the general diary - Ex.P.29 at about 9.15 AM and the information was also sent to the Assistant Commissioner of Police, Poonamallee Range and permission was also obtained at about 9.45 AM - Ex.P.2. P.W.1 also sent the information to the Judicial Magistrate No.2, Poonamallee and it was received at 11.10 AM. This information was marked as Ex.P.3.

(ii) Thereafter, P.W.1 accompanied by P.W.2 - the Village Assistant, the Sub-Inspector of Police, the Head Constable, Grade I Constable and the Village Administrative Officer proceeded to the premises and reached the place at about 11.15 AM. They went to the second floor of the premises and found A1 to A3 inside the premises. P.W.1 introduced himself and informed the accused persons that he wanted to conduct a search in the premises. The search notices that were issued to A1 and A2 were marked as Ex.P.4 and Ex.P.5. On conducting the search, P.W.1 seized 74 tins, which were covered by carbon paper and further covered by polythene.

(iii) On closely observing the tins, it was found that the same contained the prohibited drug 'heroine'. This was detected by examining the same with the inspection tools. The heroine powder was



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weighed and it was found that a total quantity of 16 Kg and 300 grams of heroine was available and out of the same, 20 grams each were separately taken and sealed. The seizure mahazar was prepared in the presence of witnesses. This seizure mahazar containing all these details was marked as Ex.P.6.

(iv) The accused persons were arrested and P.W.1, along with the accused persons and the materials that were seized, came to the police station and registered a first information report in Cr.No.1579 of 2014 for the offences under Section 8(c) read with Sections 21, 22, 23(c) and 29 of the Act. The statements of witnesses were recorded under Section 161(3) of the Criminal Procedure Code (for brevity, the Cr.P.C.). Since A2 and A3 belonged to Sri Lanka, the information was sent to the Sri Lankan Embassy. The accused persons were produced before the Court concerned and remanded to judicial custody on 19.10.2014.

(v) P.W.1 arrested A4 on 21.10.2014 and his confession was recorded in the presence of witnesses and the seizure mahazar, by which, the materials were seized, was marked as Ex.P.14. A4 was thereafter produced before the Court concerned and remanded to judicial custody. A1 and A2 were taken into police custody on



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28.10.2014 and based on their confession, cash to the tune of Rs.3,50,000/- was seized in the presence of witnesses. The admissible portion of the confession was marked as Ex.P.15 and the seizure mahazar was marked as Ex.P.16.

(vi) The seized drug was sent for chemical analysis and on receipt of the report marked as Ex.P.27, the statement of the chemical analyst was also recorded. On completion of the investigation, the case diary was placed before the Assistant Commissioner of Police, Poonamallee Range through the letter marked as Ex.P.19. The investigation was continued by P.W.8 and he collected all the relevant reports and also recorded the statements of P.W.1 and other witnesses under Section 161(3) of the Cr.P.C. Ultimately, he laid the final report before the Trial Court as against all the four accused persons (A1 to A4).

(vii) The Trial Court issued the copies of documents to the accused persons under Section 207 of the Cr.P.C. The Trial Court, after being convinced that there were prima facie materials to frame charges against the accused persons, framed the charges against A1 to A3 for offences under Section 8(c) read with Section 29, Section 8(c) read with Section 21(c) and Section 8(c) read with Section 23(c)



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read with Section 28 of the Act. In so far as A4 is concerned, the charge was framed for the offences under Section 8(c) read with Section 29 of the Act. When these charges were put to the accused persons, the same were denied.

(viii) The prosecution examined P.W.1 to P.W.8 and marked Ex.P.1 to Ex.P.29 and identified and marked M.O.1 to M.O.6. The incriminating evidence that was gathered during the course of trial was put to the accused persons. However, they denied the same as false. The defence examined D.W.1 and D.W.2 and marked Ex.D.1 to Ex.D.3.

(ix) In so far as A3 and A4 are concerned, they were acquitted by the Trial Court from all charges.

(x) The Trial Court, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the prosecution had proved the case beyond reasonable doubts against A1 and A2 only for the offences under Section 8(c) read with Section 21(c) of the Act and they were acquitted from the other charges. The Trial Court accordingly convicted and sentenced the appellants in the manner stated supra. Aggrieved by the same, these criminal appeals are filed before this Court.



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3. I have heard both the learned counsel for the respective appellant and the learned Government Advocate appearing on behalf of the State.

4. The learned counsel for the respective appellants submitted that P.W.1 did not follow the mandate under Sections 42(1) and 42(2) of the Act before ever the search was conducted and hence, the case of the prosecution must fail on this ground alone. They would further submit that there was absolutely no material to prove that P.W.1 had written down the information received by him and in order to cover up the lacuna, P.W.1 was recalled at the fag end of the trial and the general diary was marked as Ex.P.29. The learned counsel also submitted that marking of the general diary is barred under Section 172 of the Cr.P.C.

5. It was further contended by the respective learned counsel for the appellants that even on the merits of the case, there were irreconcilable contradictions in the evidence of P.W.1, P.W.2 and P.W.7. According to them, the general diary that was marked as Ex.P.29 was not in line with the specific reference made to the general



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diary in Clause 3(c) of the first information report marked as Ex.P.7. It was submitted that the evidence of D.W.1 read with Ex.D.1 and Ex.D.2 would show that there was a news item in the newspaper 'Daily Thanthi' on 18.10.2014 morning about the seizure of heroine and the arrest of three accused persons. It was further submitted that the very basis of the case of the prosecution as if P.W.1 got an information on 18.10.2014 at 9 AM and thereafter he went to the scene of crime becomes totally unbelievable and false.

6. The learned counsel for the appellants, to substantiate their submissions, relied upon the judgment of the Apex Court in the case of ***Karnail Singh Vs. State of Haryana [reported in 2009 (8) SCC 539]***.

7. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the requirements of Sections 42(1) and 42(2) of the Act were strictly complied with and that the same is evident from Ex.P.29 and Ex.P.2. He would further submit that the prosecution had clearly established the possession of heroine by A1 and A2, that they were in possession of commercial quantity and



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that the same was considered by the Trial Court while convicting and sentencing them. The news item, which was relied upon by the learned counsel for the appellants, according to the learned Government Advocate (Crl.Side), is more in the nature of hearsay evidence, which is inadmissible and this issue was also properly considered by the Trial Court and rejected.

8. In so far as the contradictions, that were pointed out by the learned counsel for the appellants, are concerned, it was contended by the learned Government Advocate (Criminal Side) that they do not go to the root of the matter nor vitiate the case of the prosecution. Accordingly, he sought for dismissal of both the criminal appeals.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. The Constitution Bench of the Apex Court in the case of ***Karnail Singh (cited supra)***, settled the law with respect to the compliance of the requirements under Sections 42(1) and 42(2) of the



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Act wherein it has been concluded as follows :

"In conclusion, what is to be noticed is that Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat [(2000) 2 SCC 513] : [2000 SCC (Crl.) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham Vs. State of Kerala [(2001) 6 SCC 692] : [(2001) SCC (Crl.) 1217] hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-Section (1) of Section 42) from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of Clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per Clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a



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copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of Sub-Sections (1) and (2) of [Section 42](#) is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of [Section 42](#). To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of [Section 42](#). But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of [Section 42](#) of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of [Section 42](#) of the Act. Whether there is adequate or substantial compliance with [Section 42](#) or not is a question of fact to be decided in each case. The above position got strengthened with the amendment



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to Section 42 by Act 9 of 2001."

11. In the case on hand, the conclusion in Clause (d) of the above extracted judgment has a lot of significance. It has been categorically held by the Apex Court that if the information is received by the Police Officer, when he is in the police station and has sufficient time to record the information in writing and send the copy of the same to the superior officer, compliance of the provisions of Section 42 of the Act has been held to be mandatory. The Apex Court also held that the Court must see if, in a given case, there is adequate or substantial compliance with the requirements of Section 42 of the Act.

12. In the instant case, P.W.1 had sufficient time to record the information received and to inform the same to his superior officer. This fact is evident from the deposition of P.W.1. During cross examination, P.W.1 stated as follows :

"அ.சா.ஆ.1-ல் நான் சம்பவ இடத்திற்கு புறப்படுகிறேன் என்று சொல்லியுள்ளேன் என்றால் சரிதான். இது குறித்து முன் கூட்டியே தங்களுக்கு தெரியப்படுத்த நான் புறப்படுகிறேன் என்று அ.சா.ஆ.1-ல் சொல்லியுள்ளேன் என்றால் சரிதான். 18.10.2014 அன்று காலை 9 மணிக்கு தகவல் வந்தது. தகவல் நேரடியாக வந்தது. அந்த



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தகவலை எழுதி தகவலாளி படித்து காட்டினதாக ஆவணம் தாக்கல் செய்யவில்லை என்றால் சரிதான். தகவலை நான் எழுத்து மூலமாக எழுதவில்லை. என்னுடைய பொது நாட்குறிப்பில் பதிவு செய்துள்ளேன். அந்த தகவலை 72 மணி நேரத்தில் மேலதிகாரிகள் தெரியப்படுத்தினதாக ஆவணம் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான். எங்கள் காவல் நிலையத்திலிருந்து உதவி ஆணையர் அலுவலகத்திற்கு இரண்டு சக்கர வாகனத்தில் 5 நிமிட நேரத்தில் செல்லலாம். பூந்தமல்லி தாசில்தாருக்கு வேண்டுகோள் கடிதம் 10.15 கொடுத்து உடனடியாக இரண்டு தனி நபர் சாட்சிகளை அனுப்பி வைத்தார். நான் கொடுத்த கடிதத்தை ஆவணமாக இவ்வழக்கில் தாக்கல் செய்யவில்லை."

13. P.W.8, in the course of cross examination, stated as follows:

"18.10.2014-ல் காலை 9.30 மணிக்கு பூந்தமல்லி காவல் ஆய்வாளர் முதன் முதலில் என்னிடம் தகவல் சொன்னார். அ.சா.ஆ.1-ல் எழுத்து மூலமாக என்னிடம் அனுமதி கேட்ட கடிதம் ஆகும். ஆய்வாளர் அவருக்கு கிடைத்த தகவலை எழுத்து மூலமாக எழுதினதாக பொது நாட்குறிப்பேட்டில் குறிப்பிட்டதாக என்னிடம் கொடுத்த கடிதத்தில் அவர் தெரியப்படுத்தவில்லை. எனக்கு கொடுத்த 57 அறிக்கையில் தகவலை பொதுநாட்குறிப்பில் 9.15 மணிக்கு பதிவு செய்ததாக சொல்லியுள்ளார். பொது நாட்குறிப்பேட்டை நான் சரிபார்க்கவில்லை. பொது நாட்குறிப்பேட்டில் ஆய்வாளர் என்ன எழுதியிருந்தார் என்பது எனக்கு தெரியாது. ஆய்வாளர் தகவலில் அவர் பெற்ற தகவலின் நகலை எனக்கு கொடுக்கவில்லை."

14. It is clear from the above extracted evidence that initially, no



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material was placed before the Trial Court to substantiate that P.W.1 had recorded the information received by him. However, P.W.1 was recalled nearly after 1 1/2 years and Ex.P.29 was marked through him. Ex.P.29 is the general diary that was maintained in the Poonamallee Police Station and on 18.10.2014 at about 9.15 AM, it has been recorded in writing that P.W.1 had received a secret information at about 9 AM to the effect that heroine had been concealed in a premises. P.W.1, even when he was examined in chief, had categorically stated that such an entry was made in the general diary at 9.15 AM.

15. The main objection that was raised by the learned counsel for the respective appellants is that the general diary cannot be taken in evidence since there is a bar under Section 172 of the Cr.P.C.

16. This submission made by the learned counsel for the appellants is unsustainable. There is a marked difference between a case diary and a general diary. What is barred under Section 172 of the Cr.P.C., is only the case diary.

17. The law on this issue has been dealt with by the First Bench



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of this Court in the case of **P.Kalaiselvam and others Vs. State**
[reported in MANU/TN/2712/2019] wherein it has been held
thus:

"25. While we hold that the discrepancy brought out by the learned Senior Counsel appearing for the accused will not affect the prosecution case, we must also lay down here that the aforesaid decision rendered by the learned Single Judge in Crl OP (MD)No.26744 of 2018 dated 27.11.2018 (MANU/TN/7087/2018 : 2018 (2) LW Criminal 853) does not represent the correct legal position. [Section 172](#) of Cr.P.C. reads as follows :

'172. Diary of proceedings in investigation.

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(1-A) The statements of witnesses recorded during the course of investigation under Section 161 shall be inserted in the case diary.

(1-B) The diary referred to in Sub-Section (1) shall be a volume and duly paginated.)

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be



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entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of [Section 161](#) or [Section 145](#), as the case may be, of the [Indian Evidence Act, 1872](#) (1 of 1872), shall apply.'

26. The Hon'ble Supreme Court in the decision reported in MANU/SC/0337/1995 : 1995) 4 SCC 430 ([Shamshul Kanwar vs. State of U.P](#)) observed that some vagueness or confusion is there in respect of the meaning of the word "diary" used in [Section 172](#) and other Sections of [Cr.P.C.](#) and suggested that a legislative change is necessary. It did not hold that the general diary or station diary will fall within the scope of [Section 172](#) of Cr.P.C. There is no doubt that as per the police standing orders in force in Tamilnadu, there are two kinds of diaries. One is the station diary or the general diary maintained in the police station itself and the other is the diary maintained by the investigating officer setting forth the day to day proceedings in respect of the case. There is no doubt whatsoever that such a case diary or police diary maintained by the investigating officer is what is referred to [Section 172](#) of Cr.P.C. The learned Judge in [Haji Mohammed](#) case has held that not only the case diary but also the general diary maintained in the police station would fall within the ambit of [Section 172](#) of Cr.P.C. The learned Judge extensively refers to the decision reported in MANU/SC/1166/2013 : (2014) 2 SCC 1 ([Lalita Kumari Vs. Govt. of Uttar](#)



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Pradesh) and comes to the conclusion that the ratio that can be culled out from the said judgment is that the right of an accused in relation to a Police file and "the General Diary" is a very limited one and is controlled by Section 172 of Cr.P.C.

27. We are constrained to observe that the Hon'ble Supreme Court has nowhere held it to be so. It is true that the expression "police diary/general diary" have been used somewhat interchangeably. What appears to have escaped the attention of the learned Judge is the categorical observation made in Paragraph No.95 of the aforesaid judgement rendered by the constitution bench. The said para reads as under :

'95.The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under [Section 44](#) of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code.'

Therefore, there can be no manner of doubt that what is referred to in [Section 172](#) of Cr.P.C. is only the case diary. This is because the general diary is maintained under [Section 44](#) of the Police Act. They are two distinct documents. In [State vs. H.Srinivas MANU/SC/0590/2018](#) : (2018) 7 SCC 572, it has been reiterated that the concept of maintaining general diary has its origin under [Section 44](#) of the Police Act, 1861 as



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applicable to States. [Section 44](#) of the Police Act reads as under :

'44. Police-officers to keep diary.-- It shall be the duty of every officer in charge of a police- station to keep a general diary in such form shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. The Magistrate of the district shall be at liberty to call for and inspect such diary.'

28. Police Standing Order Nos.706 and 707 of Tamil Nadu Police Standing Orders deal with the contents of the general diary. In *Sone Lal vs. State of U.P* MANU/SC/0170/1978 : (1978) 4 SCC 302, the general diary is referred to as a public document. In MANU/SC/0160/1978 : (1978) 4 SCC 428, ([Sadhu Singh vs. State of U.P](#)), it has been mentioned that entries are made in the general diary about the events that took place in the police station in chronological order and it is ordinarily difficult to fabricate false entries in the general diary. In *Bir Singh vs. State of U.P* MANU/SC/0082/1977 : (1977) 4 SCC 420, the courts, from the trial court to the Supreme Court, took note of the overwriting in the original general diary. In hundreds of reported decisions, one can find references to the entries made in the general diary and reliance being placed thereon.

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In view of the analysis of the aforementioned cases and the relevant statutory provisions, we hold that the decision reported in MANU/TN/7087/2018 : 2018 (2) LW (Criminal) 853 (Haji Mohammed vs. The State rep. by the Inspector of Police, Koradacheri P.S., Thiruvavarur District) has been wrongly decided and we overrule the same."

18. It is clear from the above extracted judgment that the bar under Section 172 of the Cr.P.C., will not apply to general diary and the Court can always bring the general diary into evidence and can act upon. Accordingly, this Court holds that Ex.P.29 that was marked through P.W.1 can be acted upon and there is no bar under Section 172 of the Cr.P.C. On carefully going through Ex.P.29, it is seen that there is an entry on 18.10.2014 at 9.15 AM about the secret information received by P.W.1.

19. The second contention that was raised by the learned counsel for the respective appellants is that the general diary marked as Ex.P.29 is not in line with the reference to the general diary as found in the first information report marked as Ex.P.7.

20. The Trial Court dealt with this issue in detail and it was found



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that there was no discrepancy and what has been noted in the first information report was regarding the entry made in the general diary when the first information report was registered on 18.10.2014 at 16.30 hours and it had nothing to do with the entry made at 9.15 AM in the general diary when the secret information was received by P.W.1. This Court is in complete agreement with the findings of the Trial Court in this regard and it is a complete answer for the objection raised by the learned counsel for the appellants.

21. The next question to be considered is as to whether the information that was recorded in the general diary will satisfy the requirements of Section 42(1) of the Act.

22. The basic requirement of Section 42(1) of the Act is that the information must be taken down in writing. This is to ensure that there is some authenticity before the Police Officer proceeds to conduct a search and seizure. The recording of the information in the general diary is a substantial compliance with the requirements of Section 42(1) of the Act.

23. Section 42(2) of the Act mandates that the information



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recorded by the Officer under Section 42(1) of the Act must be sent to the immediate official superior within 72 hours. This is once again a procedure brought in to ensure authenticity in continuation of the procedure prescribed under Section 42(1) of the Act.

24. In the instant case, Ex.P.2 has been marked on the side of the prosecution and it is clear from the same that the superior officer viz. the Assistant Commissioner of Police, Poonamallee Range had received the information and had permitted P.W.1 to proceed further with the search and seizure. This permission letter is dated 18.10.2014. That apart, the information was also sent by P.W.1 to the Judicial Magistrate No.2, Poonamallee and it was received on 18.10.2014 at 11.10 AM. The same can be clearly seen from Ex.P.3. Hence, it can be safely concluded that the requirements of Section 42(2) of the Act have also been sufficiently complied with.

25. The contradiction that was pointed out between the evidence of P.W.1 and P.W.2 with regard to the search and seizure is that P.W.1, in his evidence, stated that packing and sealing had taken place in the premises whereas P.W.2 had stated in his evidence that the



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same had taken place in the police station. This contradiction does not really go to the root of the matter. The evidence of P.W.1 and P.W.2 clearly establishes the search and seizure of the contraband. The manner, in which, it was dealt with while packing and sealing is more procedural in nature and it cannot vitiate the case of the prosecution.

26. The last issue to be dealt with is with regard to the news report that was published in the newspaper 'Daily Thanthi' on 18.10.2014.

27. D.W.1, who was working as the news distributor for the newspaper 'Daily Thanthi', has been examined to substantiate the news report marked as Ex.D.1. D.W.1 did not state in his evidence from where he received the information on 17.10.2014 about the search, seizure and arrest. He had merely stated that he made his enquiries in the Poonamallee Police Station and he was informed that the accused persons had been secured and heroine had been seized and kept in the police station.

28. In so far as the issue, with regard to letting in the news



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paper reports as evidence, is concerned, the law has been too well settled. The news paper item is, at the best, either hearsay evidence or a second hand evidence. The reporters collect information and pass it on and in this process, the truth getting perverted or garbled cannot be ruled out. Such news items cannot be said to prove themselves although they may be taken into account with other evidence. To prove a news item/newspaper report, the reporter, who collected the news, must be examined as a witness. Even then, such a report, at the best, can only be taken as a secondary evidence of its contents and the news contained therein cannot be taken to be the proof of contents.

29. Useful reference can be made to the following judgments of the Apex Court :

- '(a) Samant N.Balakrishna Vs. George Fernandez [reported in 1969 (3) SCC 238];**
- (b) Lakshmi Raj Shetty Vs. State of Tamil Nadu [reported in 1988 (3) SCC 319]; and**
- (c) Quamarul Islam Vs. S.K.Kantha [reported in 1994 (1) SCC 452]'.**

30. The Trial Court dealt with this issue also and rendered a



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finding to the effect that the evidence of D.W.1, at the best, can only be categorized as hearsay evidence without any specific source and the same cannot be acted upon. This Court does not find any perversity in the findings of the Trial Court in this regard and the same are perfectly in accordance with the law settled by the Apex Court.

31. In the light of the above discussions, this Court does not find any ground to interfere with the judgment of the Trial Court and as held by the Trial Court, the prosecution has proved the case beyond reasonable doubts. The conviction and sentence imposed by the Trial Court against the appellants are unassailable.

32. In the result, both the criminal appeals are dismissed confirming the judgment of the Trial Court. Consequently, the connected Crl.M.Ps. are also dismissed.

03.4.2023

Index : Yes
Neutral Citation : Yes

RS

N.ANAND VENKATESH,J

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To

- 1.The Principal Special Court under the EC & NDPS Act, Chennai-104.
- 2.The Assistant Commissioner of Police, T-12, Poonamallee Police Station, Thiruvallur District.
- 3.The Inspector of Police, T-12, Poonamallee Police Station, Thiruvallur District.
- 4.The Superintendent of Police, Central Prison-1, Puzhal, Chennai.
- 5.The Public Prosecutor, High Court, Madras.

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