



Crl.A.(MD).No.366 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.366 of 2021

and

Crl.M.P(MD)No.9334 of 2022

Abhinand

.. Appellant/Sole Accused

Vs.

State through,
The Inspector of Police,
Kodaikanal Police Station,
Dindigul.

In Crime No.350 of 2020

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code, to call for the records and set aside the judgment and sentence passed by the II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.117 of 2020 dated 09.04.2021 and acquit the Appellant / Accused from the charges under Sections 8(c) r/w 22(c) of NDPS Act.

For Appellant

: Mr.J.William Christopher and
Mr.I.Pinayagash, Legal Aid Counsel



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For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in C.C.No.117 of 2020 II Additional Special Court for NDPS Act Cases, Madurai, filed an appeal before this Court challenging the following conviction and sentence imposed by the trial Court:-

Appellant/sole accused	(i) Section 8(c) r/w 22(c) of NDPS Act.	(i)10 years SI. Fine of Rs.1,00,000/-In default 6 months SI
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2.1. The case of the prosecution is that on 23.10.2019, P.W.1 received a secret information from the informer on 01.00 p.m, relating to the illegal transportation of the contraband by the appellant. P.W.1 recorded the said information and forwarded the same to P.W.3. P.W.3 received the information and advised him to proceed further as per the Act. P.W.1 and P.W.2 reached the occurrence place and the informant identified the appellant at 02.30 p.m. Thereafter, P.W.1, P.W.2 and P.W.3 intercepted the appellant and made search after compliance of requirements under Section 50 of the NDPS Act. After compliance under Section 50 of the Act,



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with the consent of the appellant, they conducted inspection and found that there was a plastic cover in his pant packet. In the said cover, there was 30 numbers of LSD stamps. The said stamps contains, Narcotic Substance. The total weight of the said cover along with the contraband is 1.170 grams and the weight of the LSD Stamps alone is 0.630 milligram. It was seized under Ex.P.1. Thereafter, the accused was arrested and his confession was recorded. He was produced before the respondent police and case was registered in Crime No.350 of 2019 for the offences under Sections 8(c) r/w 22(c) of NDPS Act.

2.2.After registration of the case, P.W.3 prepared a detailed report under Section 57 of the NDPS Act and submitted the report to his higher officers and produced the accused along with the contraband to the jurisdictional Court. He examined further witnesses and obtained the expert opinion and filed the final report before the II Additional Special Court for NDPS Act Cases, Madurai and the same was taken on file in C.C.No.117 of 2020 for the offence under Section 8(c) r/w 22(c) of NDPS Act.



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2.3. The Court below furnished the copies under Section 207 Cr.P.C upon the appearance of the appellant and framed the necessary charges and questioned the appellant. He denied the same and pleaded not guilty and stood for trial. Hence, the trial was commenced.

2.4. To prove the charges, the prosecution examined PW.1 to PW.3 and marked Ex.P1 to Ex.P11 and M.O1. On the side of the appellant, D.W. 1 and D.W.2 were examined and no document was marked. D.W.1 and D.W.2 deposed that the appellant does not know Tamil.

2.5. On the basis of the defence witnesses, the learned counsel for the appellant before trial Court submitted that the requirements under Section 50 of the Act, on the basis of Ex.P.5 is not legally correct. Ex.P.5, the consent letter from the appellant for searching was in Tamil language and the appellant cannot understand or read Tamil language and he knows only Malayalam.

2.6. The learned counsel for the appellant before the trial Court further submitted that there are lot of discrepancies between the evidence of the prosecution witnesses relating to the weight of the contraband and



also there are many discrepancies between the evidence and the documents.

2.7. The learned trial Judge convicted the appellant for the offence as stated supra.

2.8. Challenging the above conviction and sentence imposed by the trial Court, the appellant filed this appeal.

3. This Court earlier appointed Mr.I.Pinayagash, learned counsel as Legal Aid Counsel for the appellant. Thereafter, the appellant appointed the present counsel namely, Mr.J.William Christopher. This Court permitted both the counsel to make argument before this Court.

4.1. Mr.J.William Christopher, the learned counsel for the appellant submitted that according to the prosecution, 30 LSD stamps were recovered from the appellant. The weight of the said LSD stamps as per the deposition is concerned, 1.170 grams. The said deposition of P.W.1 and other witnesses are quite contrary to the prosecution documents namely, Ex.P.1, Ex.P.2, Ex.P.8 and Ex.P.9. More particularly, Form-95. In the said circumstances, the recovery of the contraband along with the Plastic Cover



is 1.170 grams and the weight of the contraband is 0.630 grams as deposed by the witnesses and this creates suspicion regarding the recovery itself.

4.2. Further, Mr.J.William Christopher, the learned Counsel for the appellant submitted that Ex.P.5 was marked as the consent under Section 50 of the Act. Section 50 of the NDPS Act is to be strictly complied with before recording any finding of conviction. In this case, according to D.W. 1 and D.W.2, the appellant has no knowledge about the Tamil language. But, the said document is written in Tamil language and hence, in the absence of the consent letter in Malaiyalam, he would not have had opportunity to know the contents of the document. The examination of P.W.1 and P.W2 proved the same. Hence, the reliance of Ex.P.5, to record conviction on the basis of consent under Section 50 of the Act, is not acceptable. Hence, he seeks the acquittal of the appellant.

5.1. Mr.I.Pinayagash, the learned Legal Aid Counsel for the appellant reiterated the said argument. Apart from that, he specifically submitted that the evidence of D.W.1 and D.W.2 were not challenged by the prosecution. Further, the requirement under Section 50 of the Act, was not complied with.



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5.2. In this case, the contraband was recovered from the pant packet of the appellant. In the said circumstances, without any evidence on the side of the prosecution to show that the accused had knowledge about Tamil, compliance of Section 50 of the Act, is not acceptable. Hence, he seeks acquittal of the appellant.

6.1. The learned Additional Public Prosecutor for the respondent police on instructions and also upon perusal of the records submitted that the mentioning of 0.630 milligrams is an inadvertent mistake. The same was clarified by P.W.1, P.W.2 and P.W.3 during the chief examination. The same is to be accepted.

6.2. The learned Additional Public Prosecutor further submitted that in Ex.P.11, Chemical Analysis Report, there is clear mentioning of 0.631 '**grams**'. In the said circumstances, the weight of 30 seized LSD stamps is only 0.631 grams. Hence, the argument of the learned counsel for the appellant is not correct.



6.3. The learned Additional Public Prosecutor further submitted that there was no cross-examination and also there is no explanation during the 313 Cr.P.C., questioning. The defence is that respondent police registered a false case on the basis of false recovery. In the said circumstances, this inconsequential discrepancy has not affected the prosecution case.

6.4. The learned Additional Public Prosecutor further submitted that even though D.W.1 and D.W.2 were examined to prove that the appellant has no knowledge about the Tamil language, it is strange to see that at the time of receiving the copy of the judgment, the appellant has made an endorsement in Tamil language. Apart from that, there is no explanation during the course of 313 Cr.P.C., questioning about the above said fact. In the said circumstances, the said plea of the learned counsel for the appellant is not accepted.

6.5. The learned Additional Public Prosecutor for the respondent further submitted that in this case, there is some inadvertent mistake in the documents. But, recovery of 30 LSD Stamps is proved by the prosecution. In the said circumstances, even though it comes below the commercial quantity, punishment for in-between quantity is upto 10 years of



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imprisonment. In the said circumstances, he seeks dismissal of the present appeal without reducing the sentence.

7. This Court has considered the rival submissions made by both parties, perused the materials & records and also the impugned judgment passed by the learned trial Judge.

8. P.W.1 received the secret information about the illegal transportation of LSD Stamps by the appellant. The same was recorded and he intimated the same to P.W.3. After the information, P.W.1 and P.W.3 went to the spot and made a search by complying the requirements under Section 50 of the Act. Ex.P.5 is as follows:-



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Exp. 5

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(6)

59(1) NDPS Act பிரதமர் கோஷன் செய்வதற்கான உரிமை அறிவிப்பு

[illegible]

காவல்-துய்ப்பாளர்,
மொண்டக்காணல் காவல் நியமனம்
1993-1994

சோதனை உரிமை அறிவிப்பில் சோதனை பொய்யற்றது என்பதும் தெரிவித்துக் கொடுக்கும் பணம்

[illegible]

சாப்பட்டு விட்டு வரலாம்.

மாண்புமிகு காவல் துறை அமைச்சர்

23.10.19

BY ORDER

HEAD CLERK.

ADL SPL 1000 FOR NPS 1000



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9. After delivery of the judgment, the appellant has made an endorsement that 'தீர்ப்பு நகல் பெற்றுக்கொண்டேன்'. From the said fact, the plea of D.W.1 and D.W.2 that he does not know Tamil is not accepted and it was a made up story in order to escape from the above conviction and sentence. Hence, the argument of the learned counsel for the appellant that the requirements under Section 50 of the Act was not complied with is not accepted, when the deposition of P.W.1, P.W.2 and P.W.3 before the Court is cogent. Hence, this Court hold that the requirements under Section 50 of the Act is duly complied with by the prosecution.

10. The recovery of 30 LSD Stamps also proved in accordance with law. For which, P.W.1 and P.W.2 were examined and the recovered contraband was produced before the Court without any delay on the same day. Thereafter, it was sent to the Forensic Lab at Chennai and Chemical Analysis Report was obtained and produced before the Court. Hence, the recovery was also proved by the prosecution. The other provisions under Sections 42 and 57 of the Act are also duly complied with. P.W.3 categorically deposed that the report under Section 57 of the Act also sent to the Superior. The same was also produced before the Court within the time frame. The Chemical Analysis Report also substantiates the case of



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the prosecution. It is clearly stated that the seized items contain Narcotic Substance namely, Lysergide. All the facts and circumstances have proved that the appellant carried 30 LSD Stamps in his pant packet in a Polythene Cover.

11. The remaining question arising for consideration in this appeal is that whether the weight of 30 LSD recovered Stamps is 0.630 '*milli grams*' or 0.630 '*grams*'?

12. According to the oral evidence of the prosecution, the appellant was found in possession of 0.630 Grams of LSD and therefore, the conviction was passed by the Court below under Section 8(c) r/w 22(c) of the NDPS Act. But, According to the learned counsel for the appellant, the records clearly show that only 0.630 Miligrams alone was recovered. Therefore, he seeks for the modification of the conviction from Section 8(c) r/w 22(c) of NDPS Act into 8(c) r/w 22(b) of NDPS Act. To consider the same, it is relevant to extract the following portion of the relevant Exhibits:

12.1. The Ex.P.1, which is stated as follows:

5. கைப்பற்றிய சொத்தின் விவரம் : சுமார் 0.630
மிலிகிராம் எடையுள்ள LSD போதை ஸ்டாம்பு 30



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அதை பாலீதீன் கவருடன் 1கிராம் 170 மில்லிகிராம்
எடையுள்ளதை காக்கி கவரில் வைத்து ஸ்டாபிளர்
செய்து நூலால் கட்டி அதன் முடிச்சில் அரக்கு சீல்
வைத்து அதன் விவர லேபிள் எழுதி P1 என்று
குறியீடு செய்யப்பட்டுள்ளது.

12.2.Ex.P.2 (ஆய்வு நடினா), which is stated as follows:

அரசால் தடை செய்யப்பட்ட LSD ஸ்டாம்பை
விற்பனை செய்ய சுமார் 1.170 மில்லி கிராம்
அளவுள்ள 30 LSD ஸ்டாம்பு வைத்திருந்த
குற்றத்திற்க்காக கைது செய்து

12.3. Ex.P.3, which is stated as follows:

30 LSD ஸ்டாம்புகளையும் கைப்பற்றி அதை
என் முன்னிலையில் எடைபோட்டு பார்த்து
630 மில்லிகிராமும் பாலீதீன் கவரோடு 3 மொத்தம்
1 கிராம் 170 மில்லிகிராம் இருந்ததை
கைப்பற்றிக்கொண்டு

12.4.Ex.P.7, which is stated as follows:

மாஜிஸ்திரேட்டுக்கு அனுப்பப்பட்ட சொத்தின் ஜாபிதா
சுமார் 0.630 மில்லிகிராம் எடையுள்ள LSD
போதை ஸ்டாம்பு - 30. அதை பாலீதீன் கவருடன்
1 கிராம் 170 மில்லி கிராம்

13.From the above documents, it is clear that the recovered contraband is only “0.630 Milligrams” and not “0.630 Grams” as deposed by the P.W.5 and other witnesses. When the prosecution document itself clearly disclosed that the recovered contraband is only “0.630 Miligrams”,



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and oral evidence which is contrary to the document cannot be accepted.

Therefore, this Court inclined to convict the accused under Section 8(c) r/w 22(b) of NDPS Act.

14.Accordingly, this appeal is partly allowed in the following terms:

14.1.The conviction passed against the appellant in C.C.No.117 of 2020 by the II Additional Special Court for NDPS Act Cases, Madurai, dated 09.04.2021, for the offence under Section 8(c) r/w 22(c) of the NDPS Act is modified into conviction under Section 8(c) r/w 22(b) of the NDPS Act. As a sequel, the sentence of imprisonment to undergo 10 years is reduced to 7 years.

14.2.The fine amount imposed by the Court below is confirmed.

Consequently, the connected miscellaneous petition is closed.

14.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
dss



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To

- 1.The II Additional Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Kodaikanal Police Station,
Dindigul.
- 3.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

dss

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