



CRL MP(MD) No.12237 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twelfth day of September Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN
CRL MP(MD) No.12237 of 2023
in
CRL A(MD) No.347 of 2023

KALIMUTHU @ VELLAIKALI

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
KARIMEDU POLICE STATION,
MADURAI CITY.
(CRIME NO.1403/2020)

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to permit to take additional evidence to mark the Dinathanthi newspaper (Madurai Edition) dated 21.09.2020 through its reporter and editor and Dinamalar newspaper (Madurai Edition) dated 22.09.2020 through its reporter and editor and also the Editor of the News 7 tamil channel to meet the ends of justice.

Prayer in CRL A(MD).347/2023 :

To call for the records and set aside the judgment and conviction dated 22.07.2022, by the learned II Additional Special Court for NDPS Act Cases, Madurai in C.C.No.267/2020 and acquit the Appellant.

Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.B.KUMAR, Senior Counsel for M/S.PON KARTHIKEYAN.R, Advocate for the petitioner and of MR.T.SENTHIL KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



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This Criminal Miscellaneous Petition has been filed by the petitioner to permit to take additional evidence to mark the 'Dinathanthi' Newspaper (Madurai Edition) dated 21.09.2020 through its Reporter & Editor, Dinamalar Newspaper (Madurai Edition) dated 22.09.2020 through its Reporter & Editor and also examine the Editor of the News 7 Tamil Channel.

2. The petitioner and his 5 other associates are said to have committed the offence under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act for the alleged possession of 25 kg of ganja. The II Additional Special Court for NDPS Act Cases, Madurai convicted the appellant in Spl.C.C.No.267 of 2020 under Section 8(c) r/w 20 (b)(ii)(C) of NDPS Act by the judgment dated 22.07.2022 and sentenced them to undergo 10 years Rigorous Imprisonment and pay a fine of Rs.1,00,000/- each, in default to undergo 1 year Simple Imprisonment each for the offence under Sections 8 (c) r/w 20(b)(ii)(C) of NDPS Act. Challenging the same, the petitioner filed an appeal in CrI.A.(MD)No.347 of 2023 before this Court. The other accused filed the appeal in CrI.A(MD)Nos. 492, 500 of 2022 and 577 of 2023. All the cases were posted for final disposal on 24.03.2023 and then adjourned to 01.09.2023 and then to 07.09.2023. The petitioner filed this petition under Section 391 Cr.P.C., to permit to take additional evidence to mark the 'Dinathanthi' Newspaper (Madurai Edition) dated 21.09.2020 through its Reporter & Editor, Dinamalar Newspaper (Madurai Edition) dated



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22.09.2020 through its Reporter & Editor and also the Editor of the News 7 Tamil Channel in order to prove the fact that he was arrested much earlier to the arrest shown to have been made by the Investigating Agency in the place other than that mentioned in the final report.

3. According to the prosecution, the petitioner and his close associates have conspired together to procure the Ganja from Tenkasi District and transport the same in order to sell at Madurai. In order to execute the same, they had planned to transport the Ganja in the Maruti Alto Car standing in the name of petitioner's wife. The informer informed the same to the respondent police. P.W.7, the Sub Inspector of Police attached with the respondent police received the secret information on 20.09.2020, at about 14:00 hrs. Therefore, P.W.7 recorded the same and informed to his superior and proceeded with his team to the occurrence place after complying the procedure under section 42 of the NDPS Act. When P.W.7 and his team were waiting along with the informer in the Madurai - Theni main road near mudakkusalai junction, the informer identified the white colour Alto car in which the petitioner and the other five persons had travelled with 25 kgs of Ganja. Thereafter, when P.W.7 and his team were intercepting the vehicle at 15:30 hrs, the driver and the five other persons started to run in different directions. P.W.7 and his team nabbed only four persons (A1, A2, A3 and A6) and remaining 2 persons (A4 and A5) escaped from the



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scene of occurrence. P.W.7 after complying the procedures under section 50 of the NDPS Act, found that in the boot of the car, 2 bags were found with the contraband weighing of 25 kgs. From each bag, P.W.7 took sample and prepared the seizer mahazar with photograph of the car. After that, he arrested the accused and brought the accused to the station and he registered a case in Crime No.1403 of 2020 for the offences under sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act and submitted a detailed report to P.W.8, Inspector of Police under section 57 of NDPS Act. During the course of the examination, the arrested accused disclosed that the absconding accused are A4 Karthik @ Akori Karthik and A5 Marimuthu @ Tori Mari. P.W.7 arrested the said accused on 23.10.2020 on PT warrant. Thereafter, he completed the investigation and filed the final report before the Special Court. The Special Court after considering the evidence of PW1 to PW8, Ex.P1 to Ex.P12, M.O1 to M.O.7 and Ex.D1 to Ex.D5, convicted the accused and sentenced them to undergo 10 years Rigorous Imprisonment and pay a fine of Rs.1,00,000/- each, and in default undergo 1 year Simple Imprisonment each for the offence under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act.

4. The same was challenged by the petitioner by filing the appeal before this Court.

5. The petitioner filed the present Crl.M.P. | N.12237 of 2023 under section 391 of



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Cr.P.C., to take additional evidence to mark the 'Dinathanthi' news paper (Madurai Edition) dated 21.09.2020 through its reporter & editor, Dinamalar newspaper (Madurai Edition) dated 22.09.2020 through its reporter & editor and also examine the Editor of the News 7 Tamil Channel.

6. In the said petition, the paragraphs 4 to 7 read as follows:-

"4.I state that I was actually arrested on 19.09.2020 in Courtallam and contrary to the truth, the respondents introduced a coloured version, exaggerated account and concocted story deliberately. The Policemen had neither arrested me at the alleged place near the Mudakkusalai Junction nor seized any contraband from me. The Police arrested me and other accused in the case separately and not in a manner as stated in the FIR.

5.I state that when I was in Courtallam, I was illegally arrested by the Madurai City and Trichy Special Team and I was handed over to the Respondent police on 19.09.2020 itself. The respondent police had detained me illegally and on the instruction of the higher officials, the respondents have falsely registered a FIR against me on 20.02.2023, even though I was illegally arrested on 19.09.2020.

6.I submit that the fact that I was arrested in Courtallam would be proved by the News published in Dinathanthi newspaper dated 21.09.2020 and



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the news published in Dinamalar newspaper dated 22.09.2020 regarding my arrest. The news published in the said dailies would clearly reveal that I was arrested by the Special Task Force when I was in Courtallam. Further, the news would reveal that later I was brought to Madurai. Further the news telecasted in News 7 Tamil Channel on 20.09.2020 would also prove that I was arrested in Courtallam on 19.09.2020.

7.I state that all the above facts would have been proved, if the News published in Dinathanthi newspaper dated 21.09.2020 and the news published in Dinamalar newspaper dated 22.09.2020 and the video recordings of the news telecast in News 7 Tamil Channel were marked through the relevant witnesses during the trial. Unfortunately, those viral piece of evidence were not marked, because of the reason that it could not be collected due to my confinement in prison from the date of arrest till the conclusion of trial. Only in recent days. With the help of my family members and friends. I am advised that additional evidence may be taken during appeal to prove my case and to meet the ends of justice.”

7. Averment in the counter filed by the State:-

The petitioner and the other accused were found in possession of the 25 kg of Ganja. They were nabbed by the respondent police after following the procedure



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and remanded to the custody. They have conducted the trial by engaging the efficient Advocates. They never raised the said plea of news clippings. Even during the hearing of the bail application before this Court, he filed these news clippings and hence, the claim that he has no knowledge about the same is false. Only after the case was posted for final disposal, in order to defer the appeal hearing on the premise that the period of portfolio would come to an end by the end of this month i.e., 29th September, this petition has been filed. Further, the petitioner has more than 23 previous cases and with his experience, he made the false plea that he was arrested at Courtallam. To prove the said false plea, this unauthenticated xerox copy of the newspapers were produced before this Court and the same were not admissible. The plea of receiving the additional evidence at this stage to fillup the lacuna cannot be entertained and the Hon'ble Supreme Court in the latest judgement 2023 SCC OnLine SC 423 clearly stated that the prayer to receive the additional evidence under 391 Cr.P.C cannot be allowed without satisfying the requirement.

8.Rejoinder and Written submission made by the petitioner:-

In the rejoinder, he also reiterated the averment stated in the affidavit filed in support of the petition and additionally stated that even during the remand, he specifically stated that he was arrested at Courtallam and brought in his wife's Car, and foisted the said false case. He had never seen the ganja. So, to prove the fact, said



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newspapers clippings are material document and hence, the prayer sought for in this
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petition may be allowed.

9.1. Thiru.B.Kumar, the learned senior counsel submitted that as per the judgment rendered by the Hon'ble Supreme Court in Asim @ Munmun @ Asif Abdulkarim Solanki Vs. The State of Gujarat reported in 2020 SCC OnLine SC 1098, this Court is duty bound to decide the application immediately without taking the application on merits along with appeal.

9.2. The learned senior counsel further submitted that it is the specific case of the petitioner that he was already arrested at Courtallam on 19.09.2020 and kept in illegal custody after causing injury to him and on the following date i.e., 20.09.2020, the respondent police registered the false case with the allegation that he had transported 25 kgs of Ganja along with the remaining five other accused in the Alto Car.

9.3. The learned senior counsel submitted that in the small Alto Car, travelling of the 6 persons is impossible one and hence the allegation of the prosecution that the petitioner and other accused transported the 25 Kg Ganja in the said Car and the subsequent nabbing of the petitioner and the three other accused and seizure of the said Ganja and arrest of the petitioner is not true.

9.4. The learned senior counsel further submitted that the occurrence place was



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a congested road in the Madurai city and hence non examination of independent witnesses is a serious omission on the part of prosecution in the peculiar circumstances of the case.

9.5. The learned senior counsel further submitted that the petitioner has informed about the injuries sustained by him at the hands of the respondent police to the learned Judicial Magistrate at the time of the remand. Further, in the Out Patient slip of the petitioner, it is stated that the petitioner sustained leg injuries when he was jumping from height while the police chased him at Courtallam yesterday night i.e., previous date of the occurrence. The said document was marked as Ex.D5 and the above fact was narrated before the learned trial judge, but the learned trial judge held that the factum of arrest at Courtallam had to be proved by the petitioner through independent evidence. The same is is not a correct approach as per the law laid down by the Hon'ble Supreme Court in 2007 (12) SCC 230. The learned senior counsel submitted that on the basis of the ratio laid down in the above decision, the finding of the learned trial judge to produce independent evidence and prove the defence is illegal.

9.6. The learned senior counsel further submitted that the said illegal confinement was also published in some news papers and news channels. The same were not produced before the learned trial judge. Hence, to prove the above fact, the



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petitioner filed this petition to take the same as additional evidence. In the interest of justice and to meet the fair justice, the application has to be allowed to prove his innocence.

10.1. Per contra, the learned Additional Public Prosecutor submitted that the said plea of news relating to the arrest of the accused being published in the news paper was already raised before this Court in the petitioner's bail application in Crl.O.P.No.568 of 2022 and this Court made a detailed discussion and not accepted the said plea. Hence, the petitioner already has the knowledge about the paper news. In spite of that he has not pleaded the above fact and produced the said material before the learned trial judge during 229, 313, 314 and 235 Cr.P.C proceedings. The learned Additional Public Prosecutor submitted that the said paper publication is inadmissible and also not relevant to decide the date and time of the arrest. Further, this Court while dismissing the bail petition on 11.04.2022, suggested to produce the above said news during the course of the trial to prove his case. He never produced and took false plea that he has no knowledge about the same.

10.2. The learned Additional Public Prosecutor submitted that the judgment relied by the learned senior counsel in 2007 (12) SCC 230 is not applicable to the present case. In this case, the petitioner was convicted for the possession of commercial quantity i.e., 25 kg of Ganja. As per Sections 35 and 54 of the NDPS Act,



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the presumption comes into operation. In view of the presumption clause, the judgment cited by the learned Senior counsel is not applicable.

10.3. The learned Additional Public Prosecutor further submitted that the news in the papers were not published as disclosed by the department. It is only 'collected news' and they collected the news from the unauthenticated source. The said news, is not admissible in evidence without any authenticity being attached to it. He relied on the various Hon'ble Supreme Court judgments including judgment in Quamarul Islam Vs. S.K.Kanta and Others reported in 1994 Supp (3) SCC 5 .

10.4. The learned Additional Public Prosecutor further submitted that the judgment of Hon'ble Supreme Court in Laxmi Raj Shetty and Another Vs. State of Tamil Nadu reported in (1988) 3 SCC 319 stated that the news paper report cannot be used as a proof of facts stated therein. Therefore, he sought for dismissal of the application.

10.5. The learned Additional Public Prosecutor further submitted that the document namely, the paper publication news was called for before this Court in order to postpone the hearing of the appeal and he relied the ratio laid down in the Hon'ble Supreme Court judgment in 2023 SCC Online SC 423.

10.6. The learned Additional Public Prosecutor also stated that the petitioner is having the following 23 previous cases:-



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Sl. No.	Police Station, Crime Number and District/ City	Offence U/s	Charge Sheet	Stage of the Case
1)	C5 Karimedu (L&O) P5 Crime No. 959/ 2019 Madurai City	299(A) IPC	JM VI, Madurai STC 990/2022 Dt. 05.03.2022	Case acquitted. Dt. 19.05.2022
2)	B3 Teppakulam (L&O) P.S. Cr.No.898/2012 Madurai City	392 r/w 397, 506(ii) IPC	IV Addl Sessions Court, Madurai. S/C No. 03/2014.	Case Acquitted Dt. 26.04.17
3)	B3 Teppakulam (L&O) P.S. Cr.No.510/2012 Madurai City	294 (b), 447, 427, 506 (ii) IPC.	JM.I - Madurai. STC 98/2012 Dt. 09.10.2012	Next Hearing Dt:01.09.2023
4)	V2.Avanipuram P.S. Cr.No.637/2015 Madurai City	25 (1) (A) Arms Act.	JM.VI - Madurai PRC No. 97/2017, Dt. 09.10.2017. Committed III rd Add sub Court. Sc No. 255/2022, Dt. 22.08.2022.	Next Hearing. 02.09.2023 (For Accused Appearance)
5)	E3 Annanagar P.S. Cr.No. 1435/2016 Madurai City	147,148, 302, 120(b), 353 506(ii) IPC	IV ADJ Session Madurai. SC No. 494/2016.	Next Hearing Dt.04.09.23 (For Charge Framing)
6)	D2 Sellur P.S. Cr.No.591/2015 Madurai City	147, 148, 212, 302, 506 (ii) IPC r/w 3 (2) (V) SC/ST Act	PCR Court Madurai, Spl. SC 45/2020. Dt. 21.11.2020.	Next Hearing 27.09.2023 (for Judgment)
7)	R1 Vilakkuthoor P.S. Cr.No. 1021/2013 Madurai City	147, 148, 341, 302 IPC	JM.I - Madurai. PRC No. 191/2023 Dt. 09.06.2023. Committed on 1 st ADJ Court 17.04.2023. SC No. 216/2023	Next Hearing 14.09.2023 (for Accused Appearance)
8)	B3 Teppakulam P.S. Cr.No.545/2015 Madurai City	147, 148, 341, 342, 302 IPC	JM.I - Madurai. PRC No. 06/2016, Dt. 09.06.2023.	(Committed to Sessions Court) Next Hearing 13.10.2023 (For A11, A4 A5 NBW Executing)
9)	B3 Teppakulam P.S. Cr.No.876/2013 Madurai City	147, 148, 341, 447, 307 IPC	JM.I - Madurai. PRC No. 50/2014, Dt. 30.07.2014	(Committed to Sessions Court) Next Hearing Dt 20.10.2023 (For Accused Appearance)
10)	B3 Teppakulam P.S. Cr.No.751/2012 Madurai City	147, 148, 341, 294(b), 324, 307, 506(ii) IPC	JM.I - Madurai. PRC No. 29/2013, Dt. 06.07.2013	(Committed to Sessions Court) Next Hearing 13.10.23 (For Accused Appearance)



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11)	B4 Keeraithurai P.S. Cr.No.377/2015 Madurai City	147, 148, 307 IPC @ 3(1) of TNPPDL Act.	Addl Sessions - IV, SC No. 101/2022	Next Hearing 30.10.2023 (For Accused Appearance)
12)	B4 Keeraithurai P.S. Cr.No.690/2016 Madurai City	147, 148, 341, 294(b), 506(ii) IPC & 3(1) of TNPPDL Act. 25 (1) (A) Arms Act	JM.IV - Madurai, PRC No. 138/2018 Dt. 11.12.2013	(Committed to Sessions Court) Next Hearing 07.09.2023 (For Accused Appearance)
13)	B4 Keeraithurai P.S. Cr.No.412/2019 Madurai City	147, 148, 448, 506(ii), 302 IPC @ 147, 148, 448, 506(ii), 392, 302 IPC and 25 (1) (A) Indian Arms Act	JM.IV Madurai, PRC No. 310/2022, Dt. 29.09.2022	(Committed to Sessions Court) Next Hearing 07.09.2023 (For NBW A1, A3, A4, A6, A7, A12 - NBW Pending - Accused Appearance)
14)	B4 Keeraithurai P.S. Cr.No.691/2016 Madurai City	147, 148, 341, 294(b), 307, 506(ii) IPC r/w 3(1) of TNPPDL Act and 25 (1) (A) Arms Act		Under Investigation
15)	V2.Avanarpuram P.S. Cr.No. 668/21 Transferred to NIB CID 13.09.2021. NIB CID - Cr.No. 32/2021	8(c) r/w 20(b) (ii) (c) & 25 & 29(1) of NDPS Act & 25(1)(A) Arms Act.	Principal EC NDPS Court. CC 304/2022 Dt. 27.04.2022	Next Hearing 13.09.23 (For A8 - NBW Pending - A1 FS, A10, Accused Appearance)
16)	Perunkudi P.S. Cr.No.273/2016 Madurai District	147, 148, 341, 302, 506(ii) IPC	JM.VI - Madurai, PRC No. 41/2018, Dt. 13.03.2018.	(Committed to Sessions Court)
17)	Palladam P.S. Cr.No. 697/2015 Tirupur District.	394, 397, 506 (I) IPC	Palladam Sub Court, SC No 28/2016.	Case Acquitted 19.12.2018
18)	Palladam P.S. Cr.No.701/2015 Tirupur District.	307 IPC.	Kagayam Sub Court, SC No. 40/2016, Dt. 09.05.2016.	Next Hearing 02.09.2023 (for A2 NBW, Questioning)
19)	Chathirakudi P.S. Cr.No. 83/2015 Ramanathapuram Dist.	147, 148, 341, 49, 302 IPC.	Addl Sessions Court, SC No. 246/2022 Dt. 22.09.2022.	PDJ Court Ramnad Next Hearing 05.09.2023 (for issue Summon L1 to LW4)



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19)	Chathirakudi P.S. Cr.No. 83/2015 Ramanathapuram Dist.	147, 148, 341, 49, 302 IPC.	Addl Sessions Court. SC No. 246/2022 Dt. 27.09.2022.	PDJ Court Ramnad Next Hearing 05.09.2023 (for issue Summon I-1 to I W4)
20)	Avaniapuram P.S. Cr.No.386/2008 Madurai City	147, 148, 302 IPC	JM VI Madurai PRC No. 224/2023. 1 st Addl. Sessions Court. SC No. 85/2021	Next Hearing Dt. 09.11.2023. (For Accused Appearance)
21)	E3 Annanagar P.S. Cr.No. 667/2015 Madurai City	324, 506(ii) IPC r/w 3(1) of TNPPDL Act.	JM.VI. Madurai Court, PRC 23/2023,	(Committed to Sessions Court) Next Hearing 09.11.2023. (For A5, A9 Accused Appearance)
22)	E3 Annanagar P.S. Cr.No. 617/2015 Madurai City	397, 34, 414 IPC	JM VI, Madurai, CC No. 442/2016	Case Acquitted Dt. 13.07.2019.
23)	B4 Keerathurai P.S. Cr.No.592/2016 Madurai City	147, 148, 294(h), 353, 506(ii) IPC r/w 3(1) of TNPPDL Act and 25 (1) (A) Arms Act		E Filing PRC No. 7659/20 DL 07.03.2020

Having knowledge about the procedures of the arrest and custody, he made the statement before the learned Judicial Magistrate that he was arrested at Courtallam with predetermined notion in order to create artificial suspicion in the process of the arrest made by the respondent police.

10.7. The learned Additional Public Prosecutor further submitted that even in the grounds filed along with this appeal, he has not stated about the additional documents and in the petition seeking suspension of sentence also, the accused never disclosed about the above news paper clipping. Even during questioning under



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section 313 Cr.P.C also ,he never disclosed;

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A1 - Kalimuthu @ Vellaikali	கேள்வி: இவ்வழக்கு குறித்து உமது தரப்பில் ஏதெனும் சொல்ல வேண்டுமா? பதில்: எனக்கு சட்டம் ஒழுங்கு வழக்கு உள்ளது. என்னை குற்றாலத்தில் பிடித்து வந்து, தன் மனைவியிடம் காரை வாங்கி வந்து பொய் வழக்கு போட்டுள்ளார்கள். அதற்கு முன் நான் கஞ்சாவை பார்த்ததே இல்லை. இந்த விவரத்தை ரிமாண்ட் செய்யும் போது நடுவரிடம் கூறியுள்ளேன்.
A2 - Muneeswaran	கேள்வி: இவ்வழக்கு குறித்து உமது தரப்பில் ஏதெனும் சொல்ல வேண்டுமா? பதில்: பொய் வழக்கு.
A3-Mareeswaran	கேள்வி: இவ்வழக்கு குறித்து உமது தரப்பில் ஏதெனும் சொல்ல வேண்டுமா? பதில்: மிகப் பெரிய பொய் வழக்கு.
A4 - Karthick @ Ahori Karthick	கேள்வி: இவ்வழக்கு குறித்து உமது தரப்பில் ஏதெனும் சொல்ல வேண்டுமா? பதில்: பொய் வழக்கு.
A5 - Marimuthu @ Tori Mari	கேள்வி: இவ்வழக்கு குறித்து உமது தரப்பில் ஏதெனும் சொல்ல வேண்டுமா? புதில்: நான் வெளியூரில் இருந்தேன். என்னை பிடித்து அடித்து இந்த வழக்கில் பொய்யாக சேர்த்து விட்டார்கள். என்னை வேறு வழக்கில் உள்ளே அனுப்பிவிட்டு பிறகு கழச அயட யசசநளவ செய்துள்ளார்கள்.



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A6 – Balaji

கேள்வி: இவ்வழக்கு குறித்து உமது தரப்பில் ஏதெனும் சொல்ல வேண்டுமா?

பதில்: பொய் வழக்கு.

10.8. Therefore, according to the learned Additional Public Prosecutor without any specific plea during the questioning under section 313 Cr.P.C., more particularly, in this type of offence against society with specific presumption Clause, this court has no jurisdiction to entertain xerox copy of the newspaper report to set aside the conviction. Hence, he seeks dismissal of this petition.

11. This Court considered the rival submissions made by the learned counsel on either side and perused the documents and the precedents relied upon them.

12. Now, the question to be decided in this petition is whether plea of the petitioner to receive additional evidences is to be entertained or not.

13. Before going to merit of the case, it is relevant to note the principles laid down by the Hon'ble Supreme Court while entertaining the petition under Section 391 Cr.P.C. and admissibility of xerox copy of newspaper clipping; Section 391 Cr.P.C. reads as follows:-

“Section 391 in The Code Of Criminal Procedure, 1973:-

391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if

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may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.”

13.1. Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531

“Such evidence would appear to be “necessary” within the meaning of Section 428(1) of the Code of Criminal Procedure, and may, having regard to the circumstances, be permitted to be led in appeal. The attention of the Magistrate does not appear to have been directed to the question whether the time which elapsed between the collection of blood and its examination had any material bearing on the result of the examination. The Court would normally require some evidence that the concentration of alcohol is not due to deterioration or delay in the examination of the contents of the phial or to exposure to weather



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conditions, before raising the presumption under Section 66(2). An opportunity to lead this evidence may be given under Section 428, not with a view to fill up lacunae in the evidence but to regularise the trial of the accused and to ensure that the case is established against him beyond reasonable doubt, more so when for the purpose of convicting the accused reliance is sought to be placed upon a presumption arising from the report of a Chemical Examiner, who is not examined before the Court, and which substantially raises a presumption of guilt. In this connection, the circumstance that the regularity of the process for extraction of blood and the subsequent dealing of the blood phial was not challenged by the appellant in the trial court is material.”

13.2. *Rambhau v. State of Maharashtra*, (2001) 4 SCC 759 : 2001 SCC (Cri) 812

“3. Be it noted that no set of principles can be set forth for such an exercise of power under Section 391, since the same is dependent upon the fact situation of the matter and having due regard to the concept of fair play and justice, well-being of the society.

4. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the Civil Procedure Code.”



13.3. Nishar Ahmed Fajmohmed Kaji v. State of Gujarat, (1998) 9 SCC 23 at

“7. The application for examining him was made after a lapse of seven years from the date of occurrence, some time before the hearing of the appeal though the appeal was itself pending from 1985. The High Court has rightly rejected the application filed by the appellants.”

13.4. State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575

“25. The power conferred under Section 391 CrPC is to be exercised with great care and caution. In dealing with any appeal, the appellate court can refer to the additional evidence only if the same has been recorded as provided under Section 391 CrPC. Any material produced before the appellate court to fill-up the gaps by either side cannot be considered by the appellate court; more so, to reverse the judgment of the trial court.”

13.6. Ajay Kumar Garg v. Gaurav, (2017) 11 SCC 469

“....A bare reading of the provision makes it clear that the section invests the appellate court with the power to record additional evidence, provided it is satisfied, for the reasons to be recorded, that additional evidence in the matter is necessary. Since Section 391 of the Code is an



exception to the general rule that an appeal should be decided on the evidence which was before the trial court, power under the section has to be exercised with caution and circumspection so as to meet the ends of justice and not as a matter of course.”

13.7. *Bir Singh and Others Vs. State of Uttar Pradesh* in 1977 4 SCC 420

“10.A. It is well settled that though an Appellate Court has power to take additional evidence in a suitable case yet the direction should not be exercised to fill up gaps or lacunae in the prosecution evidence.”

13.8. *Rajeswar Prasad Misra v. State of W.B.*, AIR 1965 SC 1887 :

“10. Additional evidence may be necessary for a variety of reasons which it is hardly proper to construe one section with the aid of observations made to do what the legislature has refrained from doing, namely, to control discretion of the appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as



to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him.

The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.

13.9. Rajvinder Singh v. State of Haryana, (2016) 14 SCC 671 at page 677

“12. It was certainly possible to examine forensic expert at the trial court stage itself and the High Court was right and justified in rejecting the prayer to lead additional evidence at the appellate stage.”

13.10. State of Rajasthan Vs. Asharam Alias Ashumal reported in 2023 SCC

OnLine 423

“14. This Court in Rajeswar Prasad Misra v. State of West Bengal has opined that as additional evidence may be necessary for various reasons, the legislature has refrained from curtailing such discretion of the appellate court. The touchstone of when the additional evidence at the appellate stage may be taken on record is not the impossibility or inability to pronounce the judgment in its absence, but whether there would be a failure of justice without such additional evidence. This discretion is not to be exercised lightly but requires caution and care as it is to be exercised



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only in cases when the appellate court finds, on good and justifiable grounds, that there would be a failure of justice without the additional evidence being taken on record. However, once this condition is satisfied, there is no restriction on the kind of evidence received, which may be formal or substantial.

15. In *Zahira Habibulla H. Sheikh v. State of Gujarat* this Court has elaborately dealt with the aspect of exercise of discretion, highlighting the balance which the courts have to maintain so as to not deny the right to additional evidence to do justice, and the importance of the right to fair hearing of the accused as well the prosecution. The right to fair hearing is inherent to the concept of due process of law and ascertainment of truth. Equally, there can be failure of justice if this discretion to allow additional evidence at the appellate stage is exercised in a routine and liberal manner, without the court being satisfied that the prayer has imprints of reasonableness and genuineness to at least consider the worth, credibility and acceptability of the material sought to be brought on record.

16. Both Sections 311 and 391 of the Cr. P.C. relate to power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after



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judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations as there is a difference in the stages. Section 311 of the Cr. P.C. consists of two parts; the first gives power to the court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion under Section 391 of the Cr. P.C. should be read as somewhat more restricted in comparison to Section 311 of the Cr. P.C., as the appellate court is dealing with an appeal, after the trial court has come to the conclusion with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and in detail, yet it does not possess all the powers of the trial court as it deals with cases wherein the decision has already been pronounced.

17.State (NCT of Delhi) v. Shiv Kumar Yadav-emphasises that in exercise of the discretion under Section 311 of the Cr. P.C., the court, while considering an application for recall of witness, should not get swayed by



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the argument that only the accused who is in custody will suffer by the prolongation of proceedings, as this may not be valid and serving the ends of justice. It is not only the matter of delay but also the hardship to the victim/witnesses when they are recalled for examination. Recall is certainly permitted if essential for the just decision and for which there should be a tangible reason that fair trial would suffer without it. The discretion is to be exercised judiciously to prevent failure of justice, and must not be exercised arbitrarily. In our opinion, the appellate court must be equally, if not more cautious, of the desire to delay the hearing of the appeal, or the attempt to lead additional evidence to explore a chance of contradictory evidence. While the prayer for leading additional evidence should be permitted to correct a bona fide error or otherwise, and a party may be entitled to further opportunity without any fault on the part of the opposite party, the request for recall should be bona fide and is to be balanced carefully with relevant considerations, including hardship to the witness and delay of the proceedings. Right to speedy trial, including speedy disposal of an appeal, is not the exclusive right of an accused, but an obligation of the court towards the society in general, and the victim in particular. Balance between the rights of an accused and the interests and



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rights of an individual victim and the society, without compromising the right of the accused to a fair trial, has been highlighted by this Court in Girish Kumar Suneja v. Central Bureau of Investigation, P.Ponnusamy v. State of Tamil Nadu and State of West Bengal v. Amiya Kumar Biswas. Every criminal case, it is stated, is a voyage of discovery in which the truth is the quest. The process of ascertaining the truth requires compliance of procedures and rules of evidence. In a well-designed system, judicial findings of formal legal truth should coincide with substantive truth. This happens when the facts contested are skillfully explored in accordance with the procedure prescribed by law. Further, in a criminal trial, burden of proof to establish the fact, which has to be proven beyond reasonable doubt, is on the prosecution. The power to take additional evidence in an appeal is to be exercised to prevent injustice and failure of justice, and thus, must be exercised for good and valid reasons necessitating the acceptance of the prayer.

18. When we apply the aforesaid dicta to the factual matrix and background of the present case as held in paragraph 11 above, we do not think that the test to allow additional evidence is satisfied. On the other hand, the criminal appeal, which is ripe for hearing before the High



Court, has not been taken up and has been delayed by moving the application under Section 391 of the Cr. P.C. for recording of additional evidence, which was filed nearly eight years after the date of occurrence. If we carefully look at the reasons given, which have found favour in the impugned judgment, we can easily visualize that there could be further applications for recording of additional evidence of the main witnesses, the victim (PW-5) and/or the Investigating Officer - Chanchal Mishra (PW-43), who have already been subjected to lengthy examinations over a prolonged period on eleven occasions in the case of the victim (PW-5) as well as the Investigating Officer - Chanchal Mishra (PW-43). The attempt is to re-open the entire case and seek re-examination of these witnesses at the appellate stage.”

14. Principles relating to the receipt of the news paper report as secondary evidence:-

14.1. (1969) 3 SCC 238 at page 261

“47. Further we have ruled out news items which it is the function of the newspaper to publish. A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect



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information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.”

14.2. All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi, (2009) 5 SCC 417 :

“75. The xerox copies of the newspapers in which the contents of speech made by Respondent 6 have been published cannot be relied upon because the petitioners have not filed the affidavits of those who covered the meeting held by the political parties in front of Chepauk Guest House on 1-10-2007 and heard the speech made by Respondent 6. If such affidavits had been filed, Respondent 6 could have been called upon to explain his position. Likewise, the original tape containing telecast of the speech made by Respondent 6 has not been made available to the Court.”

14.3. BSNL v. BPL Mobile Cellular Ltd., (2008) 13 SCC 597 : 2008 SCC OnLine SC 894 at page 623

“55. We have noticed hereinbefore the effect of an internal circular.

There is no presumption about their correctness. Presumption of



correctness of documents is provided for in Sections 81 and 84 of the Evidence Act. Even the contents of a newspaper, as envisaged under Section 81 of the Evidence Act, would not be presumed to be correct.”

14.4. Laxmi Raj Shetty v. State of T.N., (1988) 3 SCC 319 : 1988 SCC (Cri) 633 at page 346

“25. We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.

26. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in absence of the maker of the statement appearing in court and deposing to have perceived the fact reported. The accused should have therefore produced the persons in whose presence the seizure of the stolen money from Appellant 2's house at Mangalore was effected or examined the



press correspondents in proof of the truth of the contents of the"

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14.5. B. Singh (Dr.) v. Union of India, (2004) 3 SCC 363 : (368

"3.He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some paper cuttings of news items. He has not indicated as to whether he was aware of the authenticity or otherwise of the news items. It is too much to attribute authenticity or credibility to any information or fact merely because it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. "It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence."

14.6. S.A. Khan v. Ch. Bhajan Lal, (1993) 3 SCC 151 at page 160

"22. In the present case, no evidence has been let in proof of the statement of facts contained in the newspaper report. "The absence of any denial by Ch. Bhajan Lal will not absolve the applicant from discharging his obligation of proving the statement of facts as appeared in the Press report." In fact, Ch. Bhajan Lal in his counter-affidavit has taken a stand that the statements attributed to him based on the newspaper report are mere hearsay and cannot in law be relied upon for



the purpose of initiating such proceedings. Therefore, in the absence of required legal proof, the Court will not be justified in issuing a suo motu notice for contempt of court.”

14.7. *Kushum Lata v. Union of India*, (2006) 6 SCC 180

“17. . It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”

14.8. *Ghanshyam Upadhyay v. State of U.P.*, (2020) 16 SCC 811

“6. As noted, the entire basis for making the allegations as contained in the miscellaneous petition is an article relied on by the petitioner said to have been published in the newspaper. There is no



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other material on record to confirm the truth or otherwise of the statement made in the newspaper. In our view this Court will have to be very circumspect while accepting such contentions based only on certain newspaper reports. This Court in a series of decisions has repeatedly held that the newspaper item without any further proof is of no evidentiary value. The said principle laid down has thereafter been taken note in several public interest litigations to reject the allegations contained in the petition supported by newspaper report.”

14.9. Quamarul Islam v. S.K. Kanta, 1994 Supp (3) SCC 5 at page 28

“49. In the present case, we find that no legally admissible evidence has been led by the respondent-election petitioner, in proof of the facts contained in the newspaper reports (news items), messages and advertisements. The appellant, returned candidate, denied the making of the offending statements. The various newspaper reports, advertisements and messages, as published in Bahmani newspaper cannot be treated as proof of the facts stated therein and cannot be used against the appellant in the absence of any evidence aliunde.”

15. 1. The prosecution case is that the petitioner along with 5 persons travelled in the Alto Car along with 25 kg of Ganja and they were intercepted by the



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respondent police and they ran in different directions and the respondent police nabbed the petitioner and three other accused and recovered the said contraband on 20.09.2020 at 03.30 p.m. According to the petitioner, he was arrested at Courtallam on the previous day of the occurrence i.e., on 19.09.2020. So, arrest and recovery is false. The respondent police fabricated the records and planted the materials in the Car.

15.2. To prove his defence that he has been arrested at Courtallam, now he files this petition under Section 391 Cr.P.C., to take additional evidence to mark the 'Dinathanthi' news paper (Madurai Edition) dated 21.09.2020 through its reporter & editor, Dinamalar newspaper (Madurai Edition) dated 22.09.2020 through its reporter & editor and also the Editor of the News 7 Tamil Channel wherein it published that the petitioner is said to have been nabbed at a different place and not at Madurai.

15.3. In this case, the conviction and sentence was passed by the learned trial Judge, dated 22.07.2022 and appeal was filed on 20.03.2023. The petitioner has not filed any application seeking the present prayer in the petition, before the hearing of this case. Since the co-accused filed the appeals in the year 2022 in CrI.A.(MD)Nos. 492 and 500 of 2022, their cases were posted before this Court for final disposal as per Roster. In view of the circumstances, all the appeals were clubbed together and posted for the final disposal along with the appeal filed by the remaining accused. Thereafter, the petitioner filed this petition under Section 391 Cr.P.C. At the request



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of petitioner's counsel and counsel for the other appellants , the case was adjourned on 01.09.2023 for final disposal and time for hearing the appeal was also fixed with the specific hearing time as 12 noon.

15.4. On that day, the learned Senior counsel submitted that the petition has to be allowed in the interest of justice and citing the Hon'ble Supreme Court judgment in Asim @ Munmun @ Asif Abdulkarim Solanki Vs. The State of Gujarat reported in 2020 SCC OnLine SC 1098, argued to dispose the application immediately. He has relied on the following proposition:-

“3. Section 391 Cr.P.C., does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard.”

15.4.1. Therefore, this Court perused the impugned judgment and the evidence of the various witnesses and the prosecution documents and defence documents and affidavit filed in support of the petition to file additional document on behalf of the petitioner and counter affidavit filed by the State and rejoinder filed by the petitioner and applied its mind to the relevant principles laid down by the Hon'ble Supreme Court relating to entertainment of additional evidence under Section 391 Cr.P.C., and



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admissibility and relevancy of the newspapers report and evidenciary value of the contents of the fact reported therein, decided to dispose this application before taking the appeal as requested by the learned Senior counsel for the appellant.

16. According to the petitioner, the news was published in the following news papers on 21.09.2020 and 22.09.2020 with content that the petitioner was arrested in Courtallam and Tenkasi is as follows:-

S.No	News Papers	Dates	Arrested Place of the accused
.			
1.	Dinamalar	22.09.2020	Tenkasi
2.	Dinathanthi	21.09.2020.	Courtallam
3.	News 7 Tamil Channel	Nil Date	

17. The petitioner filed this petition on 22.08.2023 under Section 391 Cr.P.C., to examine the Editor and the Reporter of each of the above said news papers and electronic media

18.1. Lack of pleading:

The petitioner conducted trial by engaging efficient learned counsel. During the course of trial, he meticulously cross-examined the various witnesses . He never put any suggestion regarding the publication of the above said news item to the P.W.7 and P.W.8 and other official witnesses. He never marked the said document as a defense document. He never stated in the 313 Cr.P.C proceedings about the news



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items. Further, he never examined anybody and marked the above said news items as defence document during trial. Even during the questioning under section 313 Cr.P.C., he only stated that he was arrested by the respondent police at Courtrallam. Even in the appeal grounds, the petitioner did not raise any grounds relating to the above said paper news and no-averments regarding the above news papers were made. Even in the petition filed seeking suspension of sentence, he did not make any averment regarding the paper publication.

18.2. It is clear that published news items are collected news. In the affidavit filed by the petitioner, it is not stated as to who was the reporter, who had collected the said news and authenticated source of the said collected news. It is not also averred as to whether the reporter is available or not. The same is relevant when the contents of the news report did not emanate from the Department. The petitioner has not stated the person from whom the reporter received the information. He must also disclose from whom and where the reporter got the information. The petitioner not even stated in the prayer regarding the date of news telecast in the News 7 Tamil Channel.

18.3. Moreover, according to the prosecution, A2, A3 and A4 were arrested along with the petitioner. A2, A3 and A4 in their 313 Cr.P.C., questioning, never disputed the date and place of the arrest i.e., there was no corroboration of the plea



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made by the petitioner. In addition to that, in A1's 313 proceedings, he never brought the above news clipping even though he produced earlier before this Court during the bail proceedings. The present request has also been made after a number of years i.e., nearly after 3 years from the date of the publication without even mentioning the name of the Reporters and the Editors. This shows that he filed the formal application in order to protract the hearing of the appeal in anticipation of change in portfolio, i.e., the portfolio is to be changed on 29th September.

19.False plea:

In the petition, he has stated in para 7 that due to his confinement in Prison, he could not collect the news papers and with great difficulties with the help of the family members and friends, he collected the same. As per the counter of the learned Additional Public Prosecutor, the petitioner earlier during trial raised the similar contention in his bail proceeding in CrI.OP(MD)No.568 of 2022 and this Court has passed the following order:-

“14.In view of the settled position of law on the evidentiary value of the newspaper clippings as stated supra, this Court is not inclined to consider the materials placed before this Court on the side of the petitioner, at this stage to decide the case for bail, by holding that the accused is not guilty of such offence. It is also seen that the criminal case



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itself stands posted for the questioning under Section 313 of Cr.P.C and it is always open to the petitioner to prove his case as established under law.”

20. From the above finding of this Court in the bail proceedings, it is clear that even during the trial, the petitioner had knowledge about the alleged publication of news in the news paper. The petitioner has ample opportunities to examine the Editor and the Reporter of the said news during the trial. Therefore the case of the petitioner that he has no knowledge about the paper publication is false and lacks bona fides.

21. Necessity to recieve:-

The word incorporated in 391 Cr.P.C ‘if it is thinks additional evidence to be necessary’. To ascertain the necessity, this Court perused the records and also impugned judgment along with the submission of the learned Senior counsel and the learned Additional Public Prosecutor. The learned Senior Counsel submitted that the same was not exercised during the trial is not a ground to dismiss the application. He relied the affidavit averment in paragraph 7 and asked this Court to accept the reason in the interest of justice.

21.1. Further, the learned Senior Counsel relied on the following portion of the judgment of the Hon'ble Supreme Court in Rajeswar Prasad Misra v. State of W.B.,



reported in AIR 1965 SC 1887 :

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“10... It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it.”

21.2. But, the learned Additional Public Prosecutor relied the following line of the same judgment which reads as follows:-

“The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.”

22. Considering the entire judgment of the Hon'ble Supreme Court, it is clear that the Appellate Court firstly should come to a conclusion that the additional evidence must be necessary to pronounce the judgment. On going through the facts of the present case, it is clear that the xerox copy of the news paper produced before this Court in his application, was available during the course of the trial as revealed



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from the counter affidavit filed by the State. The same was not specifically denied by the accused in his rejoinder and written submission filed on 05.09.2023.

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23. Therefore, the contention of the learned Additional Public Prosecutor that the averment in the affidavit that the petitioner has no knowledge about the newspaper, is false and production of the same at the stage when the case is posted for final disposal clearly shows that he filed this petition only to protract the hearing of the appeal, has to be accepted. In this aspect, it is relevant to rely on the latest pronouncement of the Hon'ble Supreme Court in 2023 SCC OnLine SC 423,

“18. When we apply the aforesaid dicta to the factual matrix and background of the present case as held in paragraph 11 above, we do not think that the test to allow additional evidence is satisfied. On the other hand, the criminal appeal, which is ripe for hearing before the High Court, has not been taken up and has been delayed by moving the application under Section 391 of the Cr. P.C. for recording of additional evidence, which was filed nearly eight years after the date of occurrence. If we carefully look at the reasons given, which have found favour in the impugned judgment, we can easily visualize that there could be further applications for recording of additional evidence of the main witnesses, the victim (PW-5) and/or the Investigating Officer - Chanchal Mishra



(PW-43), who have already been subjected to lengthy examinations over a prolonged period on eleven occasions in the case of the victim (PW-5) as well as the Investigating Officer - Chanchal Mishra (PW-43). The attempt is to re-open the entire case and seek re-examination of these witnesses at the appellate stage."

24. Here, the petitioner did not seek any document from the public authority.

He relies only on xerox copy of the paper news. The contents of the paper news is as follows:-

Dinathanthi - 21.09.2020	Dinamalar - 22.09.2020
மதுரை தி.மு.க முன்னாள் மண்டல தலைவர் வி.கே.குருசாமி. அ.தி.மு.க முன்னாள் மண்டல தலைவர் ராஜபாண்டி இவர்களுக்கு இடையே தேர்தல் தொடர்பாக முன்விரோதம் இருந்தது. இந்த முன்விரோதத்தில் பழிக்குப் பழியாக இருதரப்பிலும் 10 க்கும் மேற்பட்ட கொலைகள் நடந்துள்ளன. இந்நிலையில் காமராஜர்புரம் பகுதியைச் சேர்ந்தவரும். ராஜபாண்டி தரப்பைச் சேர்ந்தவருமான வெள்ளைக்காளி என்பவர் மீது நகரின் பல்வேறு காவல் நிலையங்களில் பல வழக்குகள் நிலுவையில் உள்ளன. போலீசார் அவரை கஞ்சா வழக்கிலும் தேடி வந்தனர். இதற்கிடையே. அவர் திருச்சியில் பதுங்கியிருப்பதாக தகவல் கிடைத்தது. அதன் பேரில் மதுரை மாநகர் சிறப்பு படை போலீசார் திருச்சி போலீசாருடன் இணைந்து பிரபல ரவுடி வெள்ளைக்காளியைத் தேடி வந்தனர். இதற்கிடையே. ஆவர் குற்றாலத்தில் பதுங்கியிருப்பதாக தகவல் கிடைத்தது. ஆதலினால். தனிப்படை போலீசார் குற்றாலம் சென்று வெள்ளைக்காளி உட்பட 4 பேரை கைது செய்தனர். அவர்களிடமிருந்து 25 கிலோ கஞ்சா மற்றும் கார் பறிமுதல் செய்யப்பட்டது. அதன் பின்னர் அவர்களை மதுரைக்கு அழைத்து வந்தனர். அப்போது. வெள்ளைக்காளி கீழே விழுந்து காயம் அடைந்தார். இதை தொடர்ந்து அவரை மதுரை அரசு ஆஸ்பத்திரியில் சிகிச்சைக்காக சேர்த்தனர். மேலும். அவரிடம் போலீசார் விசாரணை நடத்தி வருகின்றனர்.	கொலை வழிப்பறி உள்ளிட்ட வழக்குகள் உள்ள காமராஜர்புரம் ரவுடி காளிமுத்து என்ற வெள்ளைக்காளி 32. நேற்றுமுன்தினம் கூட்டாளிகளுடன் தென்காசியில் பதுங்கியிருந்தபோது போலீசார் சுற்றி வளைத்தனர். அப்போது தப்ப முயன்று மாடியில் இருந்து குதித்ததில் காலில் எலும்பு முறிவு ஏற்பட்டது. தற்போது. மதுரை அரசு மருத்துவமனையில் சிகிச்சை பெறுகிறார். கூட்டாளிகளில். திருச்சி தாராநல்லூர் முனி!வரன் 24. மாரி!வரன் 37. பர்மா காலனி பாலாஜி 23. ஆகியோரை போலீசார் கைது செய்தனர். தப்பி ஓடிய அகோரி கார்த்திக். டோரி மாரி ஆகியோரை தேடி வருகின்றனர்.



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25. Even in the news item published in 'Dinathanthi', there is no mentioning the date and time of arrest. In the news item published in 'Dinamalar' the word “நேற்று முன்தினம்” does not mean that the arrest was made before the date of occurrence. Even if the report is accepted it does not support the case of the petitioner. It is the specific case that the appellant was arrested at Courtallam and the same plea was taken in 313 Cr.P.C., questioning. In the Dinamalar newspaper dated 22.09.2020, it is stated that he was arrested at 'Tenkasi' along with his 4 associates. Further, in the Dinathanthi report dated 21.09.2022, it is stated that he along with his 4 associates were arrested at Courtallam. But, A2, A3 and A4 never took that plea. In view of the mutually conflicting reports, it is clear that the reports not only lacks authenticity, it also does not corroborate the plea of the petitioner that he was arrested at Courtallam.

26. In the special circumstances of the case, taking consideration of the false affidavit filed in support of this petition and the claim that he was not aware of the newspapers report, and considering the fact that there is no proper pleadings during the entire process of the trial and in this appeal upto the date of the final hearing, and considering the fact that there is no authenticity attached with the collection of the source of information, the plea of the petitioner to examine the reporter and editor to mark the news clippings which is in nature of the secondary evidence cannot be



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accepted and the same is not enough to whittle down the judicial documents that are
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available on record.

27. It is relevant to note that two types of information regarding the criminal case are published. The first type is where the Department itself some time published the arrest of the accused with brief allegation. In the said case, it is the duty of the accused, to get the author of the said disclosure of the news and call the said person as witness either to affirm or differ. If the said person, does not appear in spite of the request made by the accused, the said evidence may be taken into account with other evidence if the other evidence is forcible. The Second type is when, the reporter collected information regarding the arrest and the recovery relating to the crime without any authenticity. The content of the newspaper report is to be pleaded. Before calling to examine, the source of information from whom it has been got is to be pleaded. In every petition, name of the reporter, name of the person from whom he got the information to be pleaded before making application to mark the newspaper. In the present case, without prompt pleadings and prompt production before the Court at relevant time to prove the publication, the said news is not even eligible to be received as a secondary evidence. It is well settled that a report in a newspaper is only a hearsay evidence. The newspaper is not one of the document referred to in Section 78 (2) of the Indian Evidence Act by which, the allegation of the fact can be



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proved. The presumption of genuineness attached under Section 81 of the Act, to a newspaper report cannot be attached to the facts reported therein. Even if the reporter of the said newspaper is examined, the same cannot be treated as a primary evidence to prove the fact in issue. In this case, no such situation arises. In the newspapers, it is not stated that the news was published as a Department news.

28. The learned trial judge convicted the appellant under Sections 8(c) r/w 20(b) (ii)(C) of NDPS Act for possession of 25 Kg of Ganja. Once prosecution already produced the legal evidence to prove the possession of commercial quantity of Ganja, the presumption under Section 54 r/w 34 comes into operation. To dispel the presumption, the appellant is duty bound to prove his defense beyond reasonable doubt and not by preponderance of probability, as per the Section 35 of the NDPS Act. The xerox copy of news papers do not meet the said standard of proof. Section 35 of NDPS ACT reads as follows:-

“35. Presumption of culpable mental state.:-

“(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

<https://www.mhc.tn.gov.in/> Explanation. In this section culpable mental state includes intention,



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motive knowledge of a fact and belief in, or reason to believe, a fact. (2)

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For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

29. In this aspect, it is relevant to note the Hon'ble Consitution Bench judgment in *Ukha Kolhe v. State of Maharashtra* reported in AIR 1963 SC 1531

“Such evidence would appear to be “necessary” within the meaning of Section 428(1) of the Code of Criminal Procedure, and may, having regard to the circumstances, be permitted to be led in appeal. The attention of the Magistrate does not appear to have been directed to the question whether the time which elapsed between the collection of blood and its examination had any material bearing on the result of the examination. The Court would normally require some evidence that the concentration of alcohol is not due to deterioration or delay in the examination of the contents of the phial or to exposure to weather conditions, before raising the presumption under Section 66(2). An opportunity to lead this evidence may be given under Section 428, not with a view to fill up lacunae in the evidence but to regularise the trial of the accused and to ensure that the case is established against him beyond



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reasonable doubt, more so when for the purpose of convicting the accused reliance is sought to be placed upon a presumption arising from the report of a Chemical Examiner, who is not examined before the Court, and which substantially raises a presumption of guilt. In this connection, the circumstance that the regularity of the process for extraction of blood and the subsequent dealing of the blood phial was not challenged by the appellant in the trial court is material.”

30.To prove the said fact that he was already arrested at Courtallam, the unauthenticated newspaper report, without verification of their truth and without any veracity to the facts mentioned in the same, perse do not constitute legally acceptable evidence. The Hon'ble Supreme Court in Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238 at page 261 held that only if other available evidence is forcible one, the news items can be taken into consideration if any publication of the same is proved;

“47. Further we have ruled out news items which it is the function of the newspaper to publish. A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then



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publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

31. The Hon'ble Supreme Court stated in AIR 1965 SC 1887 held that the order to examine the additional witness must not ordinarily to made if the prosecution has had fair opportunities and has not availed it unless requirement of justice dictate otherwise. In this case, the petitioner had ample opportunity to examine and produce the paper news during the trial. He has not even put any suggestion to the officer regarding the above paper news and not even pleaded during the questioning of the accused under Section 231 Cr.P.C., 313 Cr.P.C., questioning and 233 Cr.P.C proceedings. In the said circumstances there is no bonafides on the part of the appellant to seek the relief.

32. The learned Senior counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in 2007 12 SCC 230. The said judgment reported in 2007 12 SCC 230 is not applicable to the present case. In the said case, the jail records was directed to be produced to show that the appellant in that case was in jail on 21.03.1994. The same was not available. So, the trial Court held that the accused did not take steps to compel the Superintendent of the Jail to appear in person and to produce the document and hence, closed the petition and the same was not



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considered by the Appellate Court. In the said circumstance, the Hon'ble Supreme Court held that if the public authority does not produce the public document despite being called upon to do so, an adverse inference should to be drawn. Further, it is obligatory on the part of the Court to issue a suo-motu notice. Hence, the Hon'ble Supreme Court held in favour of the accused.

32.1. In this case, the trial Court convicted the petitioner for possession of 25 kg of Ganja which is an offence against the society. The above mentioned case, relates to murder. Both cannot be treated on the same pedestal. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court in Union of India v. Ram Samujh, (1999) 9 SCC 429 at page 431,

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants



clandestinely. Reason may be large stake and illegal profit involved.

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This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)

“24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.”



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So, the factual situation in 2007 12 SCC 203 is not applicable to the present case.

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33. The strong reliance placed by the learned Senior counsel for the petitioner on the Hon'ble Supreme Court judgment reported in 2019 16 SCC 712 would be of no assistance as the said precedent is not applicable to the present case. In that case, the accused was a retired Brigadier of Indian Army and he was also awarded "Maha Vir Chakra" in the 1971 War. He faced the prosecution on the allegation that he made the alienation relating to the trust property without conversion of trust corpus by unanimous approval of all trustee through the resolution. The said resolution was marked in one criminal case and on the basis of the said resolution, the said case was quashed. In other criminal case, inadvertently the said resolution was not marked. Hence, conviction was passed against the appellant. Challenging the same, he filed an appeal and filed an application under 391 Cr.P.C., to produce the said resolution and trust deed. The said documents are primary evidence. So, the Hon'ble Supreme Court considering the various aspects allowed the application to give a fair opportunity to the person holding the "Maha Vir Chakra" to prove his innocence. But, here, the petition is not filed by the petitioner to mark any primary evidence and he cannot be equated with the person receiving "Maha Vir Chakra" and as per the prosecution counter, he is involved in 21 heinous crimes. So, the petitioner's plea on the basis of the above judgment cannot be entertained.



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34. The other submissions of the learned Senior Counsel including the claim of non examination of the independent witnesses to prove the arrest and recovery is not necessary to decide this application and the same can be considered at the time of final disposal of the appeal so as to afford fair hearing of appeal on the basis of the available evidence including the defence documents D.1 to D.5.

35. Admissibility and relevancy:-

The Hon'ble Supreme Court in Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re, (2021) 10 SCC 598 judgment specifically stated that the admission of documents is to be decided at the time of the marking of the document by clarifying the Bipin Shantilal Panchal v. State of Gujarat, 2001 (3) SCC 1 in the following words:-

“15. The Presiding Officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the witness concerned. This will result in de-cluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in Bipin Shantilal



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Panchal [Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1 : 2001

SCC (Cri) 417] shall stand modified in the above terms.”

36. So, this Court made detailed discussion about the issues and finds that the said news paper clippings on the basis of the collected news by the Reporter is without any authentication and they contain two mutually contradictory versions. They are not admissible even as secondary evidence and the same are not relevant to decide the issues of arrest of the appellant overriding the judicial document of remand report etc.,

37. Accordingly, this petition is dismissed.

sd/-
12/09/2023

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13/09/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

dss

TO

1 THE II ADDITIONAL SPECIAL JUDGE FOR NDPS ACT CASES,
MADURAI.

2 THE INSPECTOR OF POLICE
KARIMEDU POLICE STATION,
MADURAI CITY.

3 THE SUPERINTEDENT,
CENTRAL PRISON, COIMBATORE.

<https://www.mhc.tn.gov.in/judis>



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4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-13502[I] dated 12/09/2023)

ORDER
IN
CRL MP(MD) No.12237 of 2023
in
CRL A(MD) No.347 of 2023
Date :12/09/2023

RS/CN/SAR-(13.09.2023) 52P 6C
Madurai Bench of Madras High Court is issuing
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