



CRL A Nos. 241 of 2023 & 155 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24-02-2026

PRONOUNCED ON: 04-03-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL. A.Nos. 241 of 2023 & 155 of 2024

Crl.A.No.241 of 2023

1.Jaya @ Jayanila
2.Kaliyammal

..Appellants/A1 & A3

Vs

The State Rep By Its,
The Inspector of Police, NIBCID,
Chennai.

..Respondent

Crl.A.No. 155 of 2024

Sivakumar

..Appellant/A2

Vs

The State rep by
The Inspector of Police, NIBCID,
Chennai.
Cr.No.79 of 2019

..Respondent

Common Prayer: Criminal Appeals filed under Section 374(2) of the Cr.P.C., to set aside the Judgment passed by the learned Principal Special



CRL A Nos. 241 of 2023 & 155 of 2024

Judge, Principal Special Court under EC and NDPS Act, Chennai dated 21.02.2023 in C.C.No.188 of 2019.

For Appellant(s):
in Crl.A.No.241/2023 Mr.R.C.Paul Kanagaraj

In Crl.A.No.155/2024 Mr.V.K.Sathiamurthy

For Respondent:
in both cases Mr.S.Raja Kumar
Additional Public Prosecutor

Common Judgment

These Criminal Appeals challenge the Judgement dated 21.02.2023 passed in C.C.No.188 of 2019 by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai convicting the appellants for the offence under Sections 8(c) r/w 20(b) (ii)(C) and 29(1) of the NDPS Act and sentencing them as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 to A3	8(c) r/w 20(b)(ii)(C) NDPS Act	Each of them to undergo RI for 12 years and to pay a fine of Rs.1,20,000/- each, in default to under go RI for 6 months.
	8(c) r/w 29(1) NDPS Act	Each of them to undergo RI for 5 years and to pay a fine of Rs.50,000/- each, in default to under go RI for 6 months.
	Sentences are ordered to run concurrently.	



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2.(a) It is the case of the prosecution that PW1, the Sub-Inspector of Police, attached to the respondent police had received a secret information on 17.07.2019, stating that two females and one male were smuggling ganja from Andhra Pradesh in Alapuzha Express, which was scheduled to arrive at Chennai Central Station at 1.30 a.m., on 18.07.2019; that PW1 after making entries in the general diary at 22.30 p.m., on 17.07.2019 had reported the information received to his superior; that at about 22.40 hours, the Inspector of Police [PW6] had granted permission to conduct search and seizure; that at about 12.30 a.m., on 18.07.2019, PW1 along with his team went to the Central Railway station; that on that particular day the train arrived late at 3.30 a.m.; that at about 4.00 a.m., the appellants were found in the car park at the Central Railway Station with polythene bags; that they had issued a communication to the appellants to conduct a search and on their agreeing to be searched by PW1, they were searched and A1 was found in possession of two bags, each containing 20Kgs of ganja (totalling 40Kgs); that A2 was found in possession of two bags, each containing 20Kgs of ganja (totalling 40Kgs); that A3 was found in possession of one bag containing 21Kgs of ganja; and that samples were drawn and after



arresting the appellants, preparing the seizure mahazars and after submitting report under Section 57 of the NDPS Act, an FIR was registered by PW6 under Sections 8(c) r/w 20(b) (ii)(C) and 29(1) of the NDPS Act. PW6 thereafter conducted the investigation, examined the witnesses and handed over the investigation to PW7, who filed the final report against the appellants for the offence under Sections 8(c) r/w 20(b) (ii)(C) and 29(1) of the NDPS Act before the learned Principal Special Judge, EC and NDPS Act cases, Chennai.

(b) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as C.C.No.188 of 2019 by the learned Principal Special Judge, EC and NDPS Act cases, Chennai, for trial. The trial Court had framed two charges against the appellants. The first charge was under Section 8(c) r/w 20(b) (ii)(C) and the second charge was under Section 8(c) r/w 29(1) of the NDPS Act and when questioned, the accused pleaded 'not guilty'.

(c) To prove its case, the prosecution had examined 7 witnesses as P.W.1 to P.W.7 and marked 18 documents as Ex.P1 to Ex.P18, besides



10 material objects as M.O.1 to M.O.10. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(d) On appreciation of oral and documentary evidence, the trial Court found the appellants guilty of both the charges and sentenced the appellants as stated above. Hence, the accused have preferred the instant appeal challenging the said conviction and sentence.

3. (i) The learned counsels for the appellants would submit that the seizure could not have been made in the manner alleged by the prosecution; that no independent witnesses were examined although the seizure is said to have been made at the Central Railway Station, where several independent witnesses would have been available at 6.00 a.m.; that it is not the case of the prosecution that they were carrying the sacks and unless it is proved that the appellants have brought the sacks, which has not been done so in this case, the conviction cannot be sustained; that since two of the appellants were ladies, a lady officer ought to have



conducted the search; that the presence of PW5 who claims to have conducted the search is highly doubtful; that there is no evidence to show that the seals were intact and the prosecution had not established the safe custody and chain of custody of the contraband between 18.07.2019 and 03.08.2019; that there are several inconsistencies between the evidence of PW1, PW2 and PW5 in the manner in which the alleged seizure was made; and that therefore submitted that the impugned judgment cannot be sustained.

(ii) The learned counsels also relied upon the judgments of the Hon'ble Supreme Court in support of their submissions that Section 52A of the NDPS Act is mandatory and has not been complied with in this case.

4. (i) The learned Additional Public Prosecutor *per contra* submitted that seizure has been proved from the evidence of PW1, PW2 and PW5; that their evidence cannot be disbelieved merely because there are no independent witnesses; that in a case of this nature it is impossible to secure independent witnesses; that the two appellants who were



females were searched by PW5; that there is no violation of any mandatory provisions; and that the defence has not elicited any fact to suggest that the seals of the contraband were tampered with, when it was sent to the scientific expert.

(ii) The learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court in ***Narcotics Control Bureau v. Kashif***, reported in **2024 (11) SCC 372**, with regard to his submission that any violation of Section 52A of the NDPS Act would not *ipso facto* render the prosecution case doubtful unless prejudice is shown by the appellants.

5. As stated above, the prosecution had examined seven witnesses. PW1 was the duty officer who had received the secret information and had seized the contraband on the information given by the secret informer along with PW2. PW3 is another police constable who had accompanied PW1 and PW2 to the scene of the occurrence. PW4 is the Deputy Director of Forensic Sciences Department, who certified that the contraband contained cannabinoids and ganja. PW5 was the



Sweeper/Sanitary Worker, working in the NIBCID Unit and who had accompanied PW1 and PW2 and had deposed that the search of the two female appellants were made in her presence. PW6 and PW7 are the investigating officers.

6. As stated earlier, it is the case of the prosecution that PW1 received a secret information that the appellants were travelling in a train from Andhra Pradesh. None of the witnesses were able to state as to in which platform the train had arrived. If the information received revealed that the appellants would arrive in a train, there was no reason why the witnesses did not go to the platform where the train arrived. Though PW1, PW2 and PW5 would state that the train arrived late that day, neither a document was produced nor independent witnesses were examined to substantiate the same.

7. Be that as it may. PW1 had not admittedly seized any ticket said to have been purchased by the appellant for their travel. In fact no cash was also seized as according to PW1 none of the appellants had cash. The relevant portion of PW1's evidence reads as follows:



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“vjphpfsplkpUe;J rk;gt ,lj;jpy; gznkh. uapy; of;bfl;Lf;fnsh jdp;gl;l
cilikfs; ,Ue;jjhfnth mtw;iw ifg;gw;wg;gl;ljh kfrhpy; fhl;lg;gltpy;iy/
jdp mwpf;ifapYk; thf;FK:yj;jpYk; brhy;yg;gltpy;iybad;why; rhpjhd;/
nrhjidadp;ngHJ vJt[k; fpilf;fhjjhy; ifg;gw;wg;gltpy;iy/”

It is highly improbable that the appellants who had travelled by train neither had tickets nor any cash in their possession. There is no explanation by PW1 as to why they went to the car parking when they were supposed to wait at the platform.

8. It is also the version of PW1 that they attempted to call/examine two witnesses, viz., one Sundaram S/o.Thiruselvam and Ravi S/o. Manikandan and they both refused. Admittedly, the female appellants were searched in a CRPF Booth. There is no reason why no CRPF personnel were examined as independent witnesses. That apart, it is well known and admitted by the witnesses that there are CCTV cameras at the Central Railway Station all over the place. No investigation has been conducted to reveal as to how the appellants had gone from the platform to the car parking with five huge bags/sacks.



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9. It is the prosecution case that PW5, who was working as a Sanitary worker in the NIBCID office accompanied PW1 and PW2. Under Section 50(4) of the NDPS Act, a search of a female shall be made only by a female officer. Though PW5 claims that she was a part of the team, which went to conduct the search and seizure, her presence is highly doubtful considering the inconsistencies in her deposition. She would state that the accused were in possession of three bags and they were each in possession of 20 kgs of Ganja, which is contrary to the prosecution case.

10. It is PW1's evidence that three appellants were standing at the car parking and identified by the secret informer. However PW5 would state that she saw all the appellants carrying the ganja and thereafter they were intercepted. Strangely, in none of the documents viz., the seizure mahazars [Ex.P6 to P11] the signature of PW5 Grace Mary is found. This is admitted by PW5 herself that she had not signed in any of the documents.

11. That apart, according to the prosecution, A1 was in possession



of two bags each containing 20kgs of ganja. A2 was in possession of two bags each containing 20kgs of ganja and A3 was in possession of a bag containing 21kgs of ganja. There is absolutely no evidence as to how the possession was attributed to the accused/appellants in the aforesaid manner, when it is the specific case of the prosecution that at the time of seizure the bags were found in front of all the accused/appellants.

12. It is also not known as to why no lady constable had accompanied the team as according to the prosecution, PW1 had received information that two females were travelling in the train. That apart, PW1 in his cross examination had admitted that he had not called any women constables who were working at the Railway station for the purpose of search or as a witness.

13. Though PW1 had stated that he called two witnesses and they refused, he admitted that at the time of seizure, several cars were parked in the parking area. No genuine effort has been made to call independent witnesses as could be seen from the evidence of the witnesses. In a case of this nature therefore non-examination of independent witnesses would



certainly have a bearing in the prosecution case, especially, since neither the CRPF personnel in whose booth/cabin the search of the females were made nor any police constable either male or female, who were working at the Central Railway Station, were called to be a witness. Non-examination of independent witnesses in this case makes the evidence of PW1, PW2 and PW5 doubtful.

14. It is in the light of the above infirmities and inconsistent versions that this Court has to examine whether the mandatory provisions have been complied with and if there is any violation, whether it had caused prejudice to the appellants.

15. It is also seen that the respondent has not complied with Section 52(A)(2) of the NDPS Act in as much as the inventory was neither certified by the Magistrate nor samples were drawn in the presence of the Magistrate. In *Kashif's case* [cited supra], the Hon'ble Supreme Court held that non-compliance of Section 52(A)(2) would always not render the prosecution case unbelievable, if the seizure otherwise can be believed.



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16. The Hon'ble Supreme Court had held that any delay or lapse in compliance of Section 52(A) of the NDPS Act by itself would not vitiate the trial and that any procedural irregularity or illegality would be fatal to the prosecution only if serious prejudice has been caused to the accused.

17. In fact the Hon'ble Supreme Court had held the judgments in *Simarnjit vs. State of Punjab*, (Criminal Appeal No.1443/2023), in *Yusuf @ Asif v. State* (2023 SCC Online SC 1328), and in *Mohammed Khalid and Another vs. State of Telangana* ((2024) 5 SCC 393), where convictions were set aside for non-compliance of Section 52(A) of the NDPS Act, were decided on the facts of that case and have not laid down any law with regard to Section 52(A) of the NDPS Act or on the issue of admissibility of any other evidence collected during the course of investigation or trial. The relevant observations of the Hon'ble Supreme Court in *Kashif's case* [cited supra], are as follows:

“50. The upshot of the above discussion may be summarised as under:

50.1. The provisions of the NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally,



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which may ultimately frustrate the object, purpose and Preamble of the Act.

50.2. While considering the application for bail, the court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

50.3. The purpose of insertion of Section 52-A laying down the procedure for disposal of seized narcotic drugs and psychotropic substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the narcotic drugs and psychotropic substances.

50.4. Sub-section (2) of Section 52-A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

50.6. Any lapse or delay in compliance with Section 52-A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also



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the statutory presumption permissible under Section 54 of the NDPS Act.

18. From the above extracted portion it would be clear that the Hon'ble Supreme Court had held that non-compliance of Section 52(A) of the NDPS Act would be a procedural irregularity and that the Court has to consider whether there are circumstances to hold that the said procedural irregularity has caused any serious prejudice to the accused. In this case, for the reasons discussed above, this Court is of the view that the evidence of PW1, PW2 and PW5, in the absence of any independent witnesses, do not inspire confidence. In that background, the non compliance of Section 52(A) of the NDPS Act, would assume significance.

19. In the facts of this case, in view of the infirmities pointed out above which would render the seizure itself doubtful, this Court is of the view that non-compliance of Section 52(A) of the NDPS Act, would further strengthen the case of the appellants. In the facts therefore, serious prejudice has been caused to the appellants due to the non-compliance of Section 52(A) of the NDPS Act.



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20. The 1st and 3rd appellants/A1 and A3, being ladies ought to have been searched only by a female officer. The presence of PW5, a Sanitary Worker in NIBCID is highly doubtful. As stated above, PW5 has not signed in any of the documents viz., seizure mahazars, arrest card, etc. PW5's evidence is also not cogent and convincing. That apart, when there were several women constables (Railway Police) in the Railway Station and also in the CRPF, admittedly, there was no reason why PW5 was chosen.

21. Therefore, in view of the above discussion, this Court is of the view that the prosecution has failed to establish the offences against the appellants. Consequently, the appellants are entitled to benefit of doubt and the impugned judgment is liable to be set aside.

22. In the result, the Criminal Appeals are allowed. The judgment dated 21.02.2023 in C.C.No.188 of 2019 on the file of the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai, convicting and sentencing the appellants for the offences under Sections 8(c) r/w 20(b) (ii)(C) and 29(1) of the NDPS Act, is set



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aside. The appellants/accused are acquitted of the charges. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

04-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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SUNDER MOHAN J.

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To

1. The Principal Special Court under EC and NDPS Act,
Chennai.
2. The Inspector of Police,
NIBCID, Chennai.
3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery common judgment in
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