



WEB COPY

CRL A No. 963 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 963 of 2023

Ajithkumar
S/o Selvam, No.23/8, Perumal Koil Garden Street,
Arumbakkam, Chennai 600106

..Appellant(s)

Vs

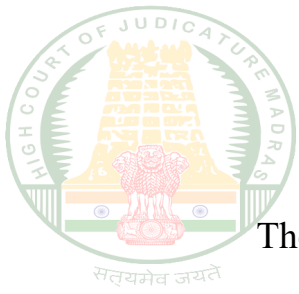
State Rep By
Inspector Of Police
K10 Koyambedu Police Station, Chennai

..Respondent(s)

To set aside the judgement passed in CC.No. 166/2019 on the file of the learned Principal Special Court under EC and NDPS Act, Chennai dated 30.1.2023.

For Appellant(s): Mr.P.Gowtham,
Legal Aid Counsel
(vide order dated 15.12.2025)

For Respondent(s): Ms.Sharada Vivek, G.A.(Crl. Side)



JUDGMENT

The petitioner/accused was convicted by the Trial Court in C.C.No.166 of 2019 for the offences punishable under Section 8(c) r/w 20(b)(ii)(B) of the Narcotics Drugs and Psychotropic Substances (NDPS) Act and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.50,000/- by a judgement dated 30.01.2023. Challenging the same, the present appeal has been filed.

2. The case of the prosecution is that on 07.09.2019 at about 7.00 a.m., PW1, Sub Inspector of Police, K.10, Koyambedu Police Station received information that one person, namely Ajithkumar, was to sell Ganja at the junction of Kaliamman Koil Street and A-Road, Koyambedu between 7.00 a.m. to 1.00 p.m. on 07.09.2019. The information was recorded as per Section 42 of NDPS Act and submitted to PW5 Investigation Officer. Thereafter, PW1 along with PW2 and PW3 went to the spot, on identification by the informant, the appellant, who was coming in Tata Ace Vehicle, bearing Registration No.TN10-AD-6744 was stopped and questioned. The appellant gave contradictory statement. After compliance of Section 50 of NDPS Act, he was searched and from him contraband seized in the seizure mahazar, Ex.P3. Since no public witness came forward, in presence of PW2 and PW3, the accused was searched after ExP2 notice under Section 50 of NDPS Act. Thereafter, the accused was brought to the Police Station and Section 57 report, Ex.P4 submitted to PW5, the Inspector of Police, who received the accused,



contraband and report and thereafter FIR in Crime No.871 of 2019 registered on 07.09.2019, which was marked as Ex.P7. The contraband and the vehicle sent to Court through Ex.P8, Form 91. Thereafter, Forensic Report Ex.P6 received confirming that the contraband is Ganja. Thereafter, charge sheet filed. During trial, PW1 to PW5 examined and Exs.P1 to P8 marked and M.Os.1 to 3 produced. On conclusion of trial, the Trial Court convicted the appellant as stated above.

3. The learned counsel for the appellant submitted that since the appellant was involved in a case under Section 302 IPC, on the request of K8 Police, a false case registered against him. Further, citing these 2 cases, the petitioner was branded as Goonda and detained under Act 14. However, the same was subsequently quashed.

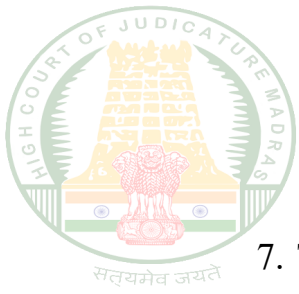
4. The learned counsel for the appellant further submitted that it is alleged that an information received by PW1 at about 7.00 a.m., and he recorded the information under Ex.P1 and submitted to PW5. Subsequently, PW1 along with PW2 and PW3 went to the spot, where the appellant was intercepted and notice under Section 50 of NDPS Act issued and he was searched and following the same, seizure mahazar Ex.P3 was prepared in the scene of occurrence at about 8.15 a.m. Thereafter, he was produced before PW5 along with Ex.P4 Section 57 of NDPS Act report, and a case registered in FIR, Ex.P7 by PW5. The FIR in



Crime No.871 of 2019 was registered at about 2.20 p.m. But, in Ex.P3 seizure mahazar prepared at the scene of occurrence there is a reference to the Crime No.871 of 2019. Admittedly, the seizure mahazar prepared at 8.15 a.m. and FIR registered at 2.20 p.m. But the crime number recorded in the seizure mahazar proves that it is a put up case and the appellant falsely implicated.

5. The learned counsel for the appellant further submitted that while collecting samples S1 and S2, Section 52A of NDPS Act not followed. Neither the records nor the evidence disclose how the samples were drawn or from where they were collected. Though in Ex.P4, Form 57 report, it mentions that samples were drawn, it is without any particulars regarding the procedures adopted, and it is without any details.

6. The learned counsel for the appellant further submitted that, the alleged occurrence is stated to have taken place in a busy public area, but no independent public witness called when seizure proceedings recorded. The respondent Police attempted to explain this omission by stating that members of the public called but declined, the said explanation is a mere bald assertion unsupported by any material on record. No particulars recorded regarding the identity of the persons who were called to join the proceedings, nor is there any record to confirm the steps taken to secure the presence of independent witnesses.



7. The learned counsel for the appellant submitted that though in Ex.P1, the information report, contains a reference to the name of the appellant, there is no mention of the Tata Ace Vehicle allegedly driven by him.

8. The learned counsel for the appellant further submitted that in this case, though the Trial Court had given explanation that in Form 91, Ex.P8 there is reference to S1 and S2, but the properties produced before the Trial Court only on 17.09.2019. As it could be seen from the property numbers assigned, namely A.No.212 of 2019 and B.No.55 of 2019, dated 17.9.19. Thus, there is a delay of ten days from the date of seizure, till it was produced to the Court. No explanation given for the delay. Consequently, the mandatory statutory procedure prescribed under the Act has not been complied with. Despite these material lapses and statutory procedural violations, the Trial Court proceeded to convict the appellant.

9. The learned counsel for the appellant in support of his contentions relied on the judgment of the Apex Court in ***Kamaljit Singh @ Pappu vs. State of Punjab*** reported in ***(2020) 14 SCC 9***, wherein the Apex Court in a similar situation recorded that unfairness in investigation becomes more glaring when we peruse the search and seizure panchanamas, it is seen that FIR number has been noted at the top of these panchanamas. Even this discrepancy not



explained by the prosecution at all. According to the learned counsel, even in this case, Ex.P3 would confirm that even before the registration of FIR, crime number recorded in the mahazar.

10. The learned Government Advocate (Crl. Side) strongly opposed the appellant's contention and submitted that Exs.P1 and P2 clearly establish that the information was duly recorded and that the mandatory requirements under Sections 42 and 50 of NDPS Act complied before seizure of the contraband. She further submitted that the seizure was effected at the scene of occurrence by PW1, the Sub-Inspector of Police, who apprehended the accused, seized the contraband, and thereafter contacted the Police Station and obtained the crime number. It was only thereafter crime number was entered in Ex.P3, the seizure mahazar. Therefore, the recording of crime number in Ex.P3 satisfactorily explained by the prosecution and no adverse inference can be drawn on that account.

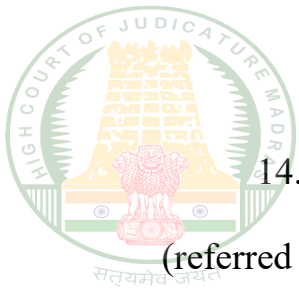
11. The learned Government Advocate (Crl. Side) further submitted that the contraband and the vehicle seized from the appellant, along with sample packets, were produced before the Court, as evidenced by Form-91, Ex.P8. The contraband sent for chemical examination. PW4, Chemical Examiner, confirmed that the contraband was Ganja. It was further submitted that PWs. 1 to 3 are the eye witnesses to the occurrence and have consistently spoken about



the seizure and other material aspects of the case. PW5, after completing investigation, filed final report before the competent Court. The Trial Court finding that the explanation given by the prosecution is acceptable, rightly convicted the appellant. Hence, prayed for dismissal of the appeal.

12. Considering the submissions made on either side and perusal of materials, it is seen that PW1 is the Sub Inspector of Police attached to the respondent Police Station. On receiving information, he recorded the same as per Section 42 of NDPS Act and submitted to PW5. Thereafter, PW1 along with PW2 and PW3 went to the scene of occurrence, stopped the appellant's vehicle. It is the prosecution case that since no public had come forward, in presence of PW2 and PW3, both Police personnels, compliance of Section 50 of NDPS Act done. Thereafter, search conducted and contraband seized.

13. In Ex.P3, the seizure mahazar, which was prepared on 07.09.2019 at about 8.15 a.m., it contains the crime number. On the other hand, Ex.P4, Section 57 report, shows that the accused and the seized contraband and the vehicle all produced before PW5 only at about 2.20 p.m. and thereafter PW5 registered FIR, Ex.P7 and assigned crime number. In such circumstances, recording of crime number in Ex.P3, seizure mahazar, creates a serious doubt regarding the manner in which the search and seizure conducted.



14. The Hon'ble Apex Court, in the judgement in ***Kamaljit Singh*** (referred to above), has categorically held that it is “unfathomable as to how the FIR number could be noted on the search and seizure panchanamas when the same were drawn up obviously at an earlier point in time and preceded the registration of the FIR.” The Court further observed that the prosecution had failed to offer any explanation for such a discrepancy. The same infirmity is present in the instant case, and no satisfactory explanation forthcoming from the prosecution.

15. There is yet another serious infirmity in the prosecution case. The materials on record do not establish that the samples marked as S1 and S2 were drawn in compliance with the mandatory procedure prescribed under Section 52-A of the NDPS Act. There is absolutely no evidence to show when, where, and in whose presence the samples were drawn. Significantly, the Trial Court has not adverted to the requirements of Section 52-A while rendering its judgment. Thus, there is a clear violation of the mandatory procedure contemplated under Section 52-A of the Act.

16. Further, Ex.P8, Form-91, reveals that the seized contraband was produced before the jurisdictional Court only on 17.09.2019, i.e., 10 days after the alleged seizure. The prosecution has not given any explanation whatsoever as to where, in whose custody, or under what safeguards the contraband was



kept during the intervening period. Such an unexplained delay in producing the seized contraband before the Court, coupled with the absence of evidence regarding proper sampling in accordance with Section 52-A, seriously affects the sanctity of the chain of custody and renders the prosecution case doubtful.

17. Admittedly, except for PW4, the Chemical Examiner, all the prosecution witnesses are police personnels. Although the alleged occurrence, search and seizure took place in a busy public place, no independent witness examined to corroborate the prosecution version. In the light of the violations of Sections 50 and 52-A of the NDPS Act, the recording of crime number in Ex.P3, creates serious doubt in the prosecution case. Further, the prosecution has not established the ownership of the vehicle.

18. In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to prove its case beyond all reasonable doubt. Accordingly, the appeal deserves to be allowed. The conviction and sentence imposed on the appellant are set aside and the appellant is acquitted of charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, shall stand cancelled.

19. This Court appreciates Mr.P.Gowtham, who was nominated by the High Court Legal Services Authority as legal aid counsel for the appellant, for

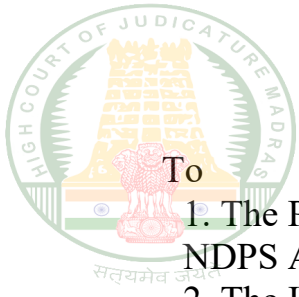


his thorough preparation and for effectively defending the appellant in this case.

The High Court Legal Services Authority is directed to pay remuneration to the legal aid counsel for the appellant.

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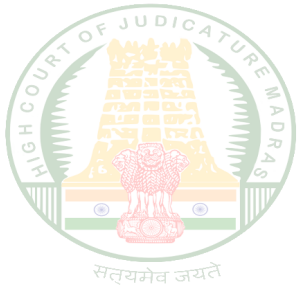
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
PVS



To

1. The Principal Special Court under EC and NDPS Act, Chennai
2. The Inspector Of Police
K10 Koyambedu Police Station, Chennai
3. The Public Prosecutor,
High Court, Madras.

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M.NIRMAL KUMAR, J.

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