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Crl.A.No.1145 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1145 of 2023

Nanda @ Nanda Kumar

... Appellant

Vs.

State rep. by
The Inspector of Police,
J-11 Kannagi Nagar Police Station,
Chennai.
(Crime No.383 of 2019)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai made in C.C.No.176 of 2019 by judgment dated 11.09.2023.

For Appellant : Mr.D.Ashok Kumar
For Respondent : Mrs.Sharada Vivek
Government Advocate (Crl. Side)

JUDGMENT

The appellant/accused in C.C.No.176 of 2019 convicted by the Trial Court by judgment dated 11.09.2023 for the offence under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act (NDPS Act)



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and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo six months rigorous imprisonment.

Aggrieved against the same, the appellant preferred the present appeal.

2.The case of the prosecution is that the Sub-Inspector of Police attached to the respondent one Balamurugan on 18.07.2019 at about 9.00 a.m. received a secret information that near the canal adjacent to Okkiyam burial ground the appellant is selling ganja daily morning from 10.00 a.m. to 12.00 p.m. The informant also informed that he would identify the appellant. The Sub-Inspector of Police recorded the same at 9.15 a.m. submitted the same to his superior Inspector of Police in conformity to Section 42 of NDPS Act. The Sub-Inspector of Police along with Head Constables Sathish and Sakthivel went to the scene of occurrence and keeping a watch. At about 9.45 a.m., they saw a person carrying orange and purple colour bag and he was questioned, following the procedure under Section 50 of NDPS Act he was searched and 2.200 kgs of ganja was found packed in polythene bags. Thereafter, samples taken, contraband was re-sealed, the accused was arrested and his confession recorded. The accused along with the contraband and Section 57 report was produced



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before PW4/Inspector of Police, who registered FIR, conducted investigation, recorded the statement of witnesses, collected documents, obtained the forensic report confirming the contraband as ganja and charge sheet filed. During trial, PW1 to PW4 examined, Ex.P1 to Ex.P9 marked and MO1 to MO3 produced on the side of the prosecution. On the side of the defence, no witness examined and Ex.D1 marked through PW4. On conclusion of trial, the Trial Court convicted the appellant as stated above.

3.The learned counsel for the appellant submitted that in this case, none of the statutory procedures contemplated under NDPS Act has been followed. In Section 42 report/Ex.P1 it is recorded as though the appellant was keeping small packets of ganja for sale but the seized article MO3 is in two packets and not in small packets. He further submitted that in this case according to the respondent, two persons, namely, Thangadurai and Loganathan were called but they refused to be a witness. Except for this short statement, there is no other particulars with regard to their address, occupation and why they refused. It is also to be seen that the alleged scene of occurrence is a public place but no public or independent witness cited. In this case PW1 is the Sub-Inspector of Police, PW2 is a Police Constable,

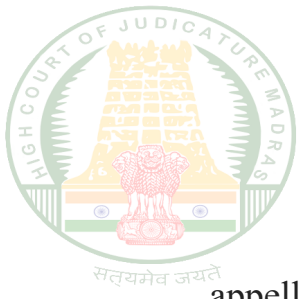


PW3 is the Forensic Expert and PW4 is the Investigation Officer. In

Ex.P5/Section 57 report it is recorded that PW1 along with his team went to the scene of occurrence with necessary instruments, namely, weighing machine, test kit, etc. further in this case, Ex.P2 to Ex.P5 prepared in the scene of occurrence near the burial ground, all these documents are typed and printed documents which necessarily could be done only in the Computer or Laptop using a printer but no explanation given as to how these documents came into existence in that remote place. PW2 admits that the documents were typed in a laptop and PW1 went to a shop and took printout using a pendrive. But PW1 does not state anything about the same which is confirmed by PW4. Thus Ex.p;2 to Ex.P5 are all self-serving documents which were created in the Police Station. He further submitted that in this case, the accused is said to have been arrested at about 1.30 p.m., he was produced before PW4 and FIR registered at about 2.00 p.m., but in the confession which is recorded in the scene of occurrence Crime No.383 of 2019 is recorded and to confirm the same, the appellant marked Ex.D1/Arrest Intimation form in which date and time of arrest is recorded as 18.07.2019 at 10.15 hours and Crime No.383 of 2019 is recorded. Thus it is clear that all the documents are created documents and the documents are



not created contemporaneous one. Added to it, there is a delay of 9 days in producing the seized contraband. The alleged seizure is said to be on 18.07.2019 but it was produced before the Court only on 26.07.2019 in A.No.157/2019 and there is further delay in sending the contraband to the Forensic Laboratory. PW3 in her report Ex.P7 records that contraband was received on 29.07.2019 and the chain of custody not explained. Further, in this case drawing of samples not done in presence of Magistrate, which is in clear violation of Section 52A of NDPS Act. The Trial Court in its judgment recorded that in **Mohanlal's** case judgment, was delivered on 31.08.2022 and in this case, samples were taken on 18.07.2019, hence the contention of the appellant before the Trial Court is not acceptable, which clearly shows the ignorance of a procedure by the Trial Judge. It is settled position that any judgment of High Court and Apex Court are retrospective unless it is specifically mentioned that it is prospective. Thus the conviction of the appellant by the Trial Court is not sustainable. In support of his contention, the learned counsel for the appellant relied upon the judgment of this Court in the case of **V.Vasantha Kumar vs., State rep., by the Inspector of Police, NIB-CID, Chennai (Crl.A.NO.1262 of 2022 dated 16.09.2025)**.



4.The learned Government Advocate (Crl. Side) opposed the

appellant's contention and submitted that PW1 is the Sub-Inspector of Police attached to the respondent who received secret information and immediately records the same, submitted to his superior officer PW4, who authorized PW1 to proceed to the scene of occurrence. PW1 along with PW2 and one Sakthivel/Head Constable went to the scene of occurrence to keep a watch and the informant identified the accused. Thereafter, the accused was intercepted, questioned, he was informed about the information received from the informer, his right under Section 50 of NDPS Act was conveyed to him, he was searched and from the bag, 2.200 kgs of ganja was found kept in a sealed polythene cover. Samples taken, accused was arrested and confession recorded. Thereafter, the accused and the contraband along with Section 57 report was produced before PW4 who conducted investigation. Samples were sent for forensic examination. PW3 examined the samples and gave a report confirming the contraband as ganja. On completion of investigation, charge sheet filed. During trial, PW1 to PW4 examined, Ex.P1 to Ex.P9 marked and MO1 to MO3 produced on the side of the prosecution and Ex.D1 marked on the side of the defence. He would submit that two independent witnesses, namely, Thangadurai and Loganathan were



called but they refused to be a witness, hence in the presence of PW2 and Sakthivel, search and seizure made. The accused not complained of any prejudice at the time of remand and during the trial but for the first time before this Court raised such a plea and the samples were rightly and properly collected. In this case, all the witnesses supported the case of the prosecution. The Trial Court considering the evidence and materials, had rightly convicted the appellant. The appellant is a notorious person having several cases against him and he involves in such kind of cases regularly.

5.Considering the submissions made and on perusal of the materials, it is seen that in this case PW1, PW2 and PW4 are Police Personnel and PW3 is a Scientific Officer of Forensic Department. PW1 received a secret information on 18.07.2019 at about 9.00 a.m., he records and submits the same to his superior officer PW4 in compliance of Section 42 of NDPS Act. Thereafter PW1 along with PW2 and one Sakthivel proceeded to the scene of occurrence to keep a watch in the area and the appellant is said to be identified and intercepted. The appellant was carrying orange and purple colour bag with wooden handle and in the bag, two white polythene packets were found, it was tested and found to be ganja. Samples taken and accused



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arrested in the scene of occurrence, at that time, the accused gave a confession. Thereafter, the accused and the contraband produced before PW4 along with Section 57 report/Ex.P5. Till the accused was produced before PW4 at 2.00 p.m. on 18.07.2019, the crime number and the offence under which the accused arrested not determined and recorded. But in Ex.D1/Arrest Intimation form Crime No.383 of 2019 and Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act is recorded at 10.15 hours on 18.07.2019. In this case, admittedly Ex.P5 comes into existence only at about 2.00 p.m and Ex.P8/FIR is registered. The confession of the accused is recorded at about 12.30 p.m. and in the confession statement, again crime number and offence under NDPS Act recorded.

6.It is to be seen that PW1 and PW2 does not state that they had taken the laptop or mobile printer along with them to the scene of occurrence. In this case, Ex.P2 to Ex.P5 are computer typed printout copies. PW1 does not state anything in this regard but PW2 admits that documents Ex.P2 to Ex.P5 are typed in a computer and PW1 took printout in a nearby shop through pendrive. Thus Ex.P2 to Ex.P5 are created documents at a later point of time which is further confirmed by Ex.D1 and the confession statement of



the accused. In this case, admittedly there is no independent witness, though by way of explanation it is recorded that one Thangadurai and Loganathan were called and they refused to be a witness but this is not sufficient since their name, address and for what reason they refused to be a witness, these particulars not available. In this case, there are vital contradictions between the evidence of PW1 and PW2 the manner in which the search, seizure, arrest and confession recorded. PW1, PW2 and PW4 admit that in this case samples were not taken in the presence of Magistrate which is a conditional requirement as per Section 52A of NDPS Act. Hence, it is in clear violation of the dictum laid down in the case of *Union of India vs. Mohanlal and others* reported in (2016) 3 SCC 379. The Trial Court given a reason that this judgment come at a later point of time and the appellant cannot take advantage of the same is on a wrong understanding of law and procedure. It is also to be seen that in this case, electronic documents are not supported with Section 65B certificate. In view of the Information Technology Act and Section 65B of the Indian Evidence Act, any computer output has to be authenticated and certified in the absence of primary evidence being produced. The printouts are secondary evidence. The Apex Court in the case of *Arjun Panditrao Khotkhar vs. Kailash Kushanrao Gorantyal and others*



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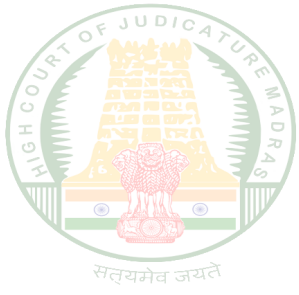
reported in **(2020) 7 SCC 1** clearly held that computer output in the nature of

secondary evidence in the absence of Section 65B certificate cannot be taken in evidence. Thus, Ex.P2 to Ex.P5 lack credibility, authenticity and acceptance. Further, in this case there have been considerable delay in producing the contraband before the Court and the chain of custody is also not proved. On the facts of the above case, it is clear that these statutory conditions followed in breach. Hence this Court is inclined to set aside the conviction and sentence imposed by the Trial Court.

7.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 11.09.2023 in C.C.No.176 of 2019 passed by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai. The appellant is acquitted. The appellant to be released forthwith. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

21.07.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse



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- To
- 1.The Principal Special Judge,
Principal Special Court under EC and NDPS Act,
Chennai.
 - 2.The Inspector of Police,
J-11 Kannagi Nagar Police Station,
Chennai.
 - 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
 - 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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